

The usefulness of punishment: problems and solutions

Abstract: In order to determine the degree of implementation and effectiveness of punishment should be according to the ratio of the set purpose and received result. Here we must of course bear in mind that between the purpose set by society lies the systematic decrease of crime in the state of crime in general, in particular its serious and extremely serious types, and the reality is that there is a considerable distance which needs to be overcome. Approached this way, it is clear there is a set of interrelated circumstances that affect the efficiency of achievements. The complexity of determining the usefulness of punishment is also associated with uncertainty - of the purpose - in contrast to the result which is freely and accurately expressed in numerical terms.

The measurement of the effectiveness of punishment by means of numerical indicators is impossible but should instead be based on the relative values of low-medium-maximum, worst-average-best, small-medium-large. What we propose, however, is making the distinction of four stages of the conditional efficiency of criminal punishment that depend on the outcome of the existing crime: high efficiency performance, medium efficiency, low efficiency and ineffective or zero efficiency.

Talking about the futility of punishment we should not forget that its options are limited and that the outcome is influenced by numerous conditions and circumstances of the social order, including the economic and political situation in the country. If the purpose is not met, this does not imply that the means is useless

♦ **Rahimov Ilham Mammadhasan oglu** – Doctor of Juridical Sciences, Professor, Honoured Jurist of Azerbaijan Republic (Azerbaijan). E-mail: mopi_sid@yahoo.com

but that it can be used wrongly. So if we wish to determine the degree of guilt of punishment in the ineffective confrontation of crime, let us then examine the usefulness of society in addressing the underlying causes of crime and the external conditions that are conducive to crime.

First of all, it is necessary to put into effect social reforms that will create a social order - in science, education, religion, in all forms of labour and power in the different kinds of educational and cultural initiatives that mutually assist each other by internal support. This order must be the union against crime.

The usefulness of punishment and thus its moral essence depends largely on the specific characteristics of each nation's psychology that has taken thousands of years to develop.

Studying the psychology of a people is more desirable from a practical point of view rather than the theoretical, and so the knowledge of the psychology of his own people would appear to be the most important condition for the legislator in determining the moral principles of punishment.

Keywords: usefulness of punishment; purposes of punishment; crime; level of efficiency; factors determining the usefulness of punishment; psychology of people.

By the usefulness of punishment we understand a property which enables it to generate profit, benefit and good which are then able to prevent harm and evil. Therefore, punishment is useful if it is able to eliminate a far greater evil than itself; likewise it proves useless when, for example, we strive to prevent harm via lengthy imprisonment, the economic value of which is negligible. Another example would be the fact that harsh punishment is rarely applied for drug use because, if we are confident that deprivation of liberty is not useful in such a case, it would be best to cure the offender. Punishment is morally justified when the use of it can be available to society as a whole and its members individually, because the public interest in principle is the interest of individuals and vice versa. Does

this therefore mean that in applying punishment we need first to seek to achieve benefits for society as a whole? If this is the case, then it may be that we need to give preference to the principle of the severity of punishment, which is to the detriment of the offender. In other words, the pursuit of the common good through punishment can prove useless for the individual. This is why the task of the legislator lies in properly determining the interests of society as a whole as well as the personality of the individual.

All activities, including those of the state, have a specific purpose otherwise any activity is meaningless. At the same time, the necessary means must be used to achieve this goal effectively. But not every means, even if it serves the common good, can be considered morally justified because the principle of 'the ends justifies the means' is in itself immoral. What then should be the goal pursued by the state when applying punishment?

In the legal literature the concept of the 'purpose of punishment' dominates, which, as we noted, in our opinion, is a mistake [18, p. 200] since that purpose does not fall into a criminal or law category but one that is philosophical, and thus is to be understood as an anticipation in mind of the result, the actions of which are aimed at achieving it. As Hegel put it: "The goal in the nearest way is something that exists inside of me, the subjective" [5, c. 39]. Therefore a goal that the government intends to achieve by means of punishment is subjective because it is generated by the people and it is expressed in the legislation and implemented by the subjective activity of the people. Punishment in principle therefore does not pursue any purpose and it is impossible to set any goal for it because purpose can be set by subjects, i.e. the state, society, power, that take into account the objective possibilities of punishment. Therefore punishment should be considered as the means for achieving the purpose, defined by the subject of the state.

As we know, crime causes significant harm to society and so the state will seek to prevent manifestations of crime. To this end, as already noted, the state uses punishment and naturally, in order to achieve this goal, it can turn to the use of other tools and features. The most important part of the policy of the

government on crime prevention is 'criminal policy' or, as some lawyers define it, 'criminal legal policy'. Modern criminal legal science in the post-Soviet world mainly inherited attitudes to the concept of criminal policy from the Soviet scientists who applied such terms to it as 'criminally legal', 'criminally processual' and 'correctively labouring'. As Soviet power developed, criminal policy became equated to criminal repression. Such an understanding logically had to lead to political repression, and so it would be more correct to consider this type of criminal policy as a criminal policy against opponents and not as a fight against crime through punishment.

It seems more appropriate to consider criminal policy as an area of social policy, i.e. as state policy in the field of crime prevention or, in the words of S. K. Gogel and F. von Liszt, as the fight against crime through punishment - although the concept of 'fight' in this case is not really appropriate since this sort of fight involves the ultimate victory of one of the opposing sides (here either the state or crime) or a draw (here the fight would cease). However, as we have seen, this historic 'fight' has never ceased up to this day and we are unlikely to see it result in the definitive victory of one side or the other so long as mankind exists. Today we should therefore not use the concept of a 'fight' against crime but the prevention of the manifestations of crime. So is the state satisfied with punishment achieving its assigned purpose? And do we see any benefit from punishment?

What we know for certain is that these questions have long occupied the progressive thinkers of the past - the lawyers, philosophers, writers and representatives of other sciences. It is by means of punishment that people in every period have tried to and are still trying to curb, eradicate and eliminate evil, in this case crime. And with this purpose in mind, a host of types of punishments were invented and yet there are many who oppose the application of punishment because of its inefficiency and futility. The history of human development acknowledges the fact that even though violence is not permissible in any form, we cannot affect criminals using words of admonition and persuasion alone.

In order to determine the usefulness of punishment, we need first to analyse the real purpose that is pursued by a society based on the objective possibilities of punishment. Here, of course, we should proceed from the fact that while crime is undesirable, it is at the same time a natural product of society, a kind of pathology which cannot be completely eradicated as in the dreams of communists and Utopians. The fundamental error of such dreams, such as those found in the Soviet period, lay in the Utopian conclusion on the nature of the historical rolling character of crime and the objective possibility of saving mankind from this social evil. There was also an unshakeable belief in the provision that the eradication of crime requires a fundamental macro-structural transformation of the entire social order. People believed that crime is a phenomenon incompatible with communism which is why measures of punishment should be recognised as moral, fair and thus permissible in the fight against crime, providing the best way in this fight. As P. P. Osipov wrote: “The only possible way for the complete elimination of crime from society is the radical transformation of social relationships, the progressive change of social conditions of the life and work of the members of society, and improvement on this basis of the social characteristics and habits of behaviour” [13, p. 35].

However, we know that the history of mankind recognises the different types and forms of social and state structure that exist with different levels of socioeconomic development, and yet crime and manifestations of crime exist throughout. Even now, as our modern civilisation creates new crimes on a seemingly daily basis, we are forced to devise new ways to combat these manifestations. We recall the words of the great Beccaria, who wrote that civilisation as well as barbarity will always keep creating specific crimes [3, p. 36]. Therefore setting the destruction of crime as a purpose is not merely unreal but Utopian. Acknowledging this, society must be content with a maximum reduction in general of the state of crime. It is for this purpose that punishment is used in modern conditions. However, it should be appreciated that punishment in this role serves as a means in the hands of society and therefore its usefulness and

effectiveness cannot be determined even in an approximate manner since a change in the crime rate over time and indeed its status in society is determined largely by conditions that are beyond the reach of the impact of punishment.

The usefulness and efficiency of punishment should be determined by taking into account the state of the level of the people - broadly its psychology, customs, traditions and historical development – as well as the economic condition in which the people find themselves living. This is because the external environment, which covers a wide component of circumstances, is also involved in the crimes committed even if the responsibility for a crime is only carried by an individual person. Thus the surroundings that provide the individual with the opportunity to commit a crime are not subject to the reaction of the social organism, for otherwise this would mean the recognition of guilt by the state in the crime committed by that person. Society of course does not deny the fact that there remain conditions and circumstances that contribute to manifestations of crime, and so it tries to eliminate these problems not by punitive methods but by social reforms. Therefore, external surroundings cannot be the object of punishment and thus have criminally legal influence even though, as we have noted, it is guilty of the existence of crime. In this case, of course, we should not be confused by the reasons that lead a person to the crime or the surrounding conditions that are conducive to the commission of the act. Based on elementary logic, it turns out that the more guilt there is in the external surroundings, the less the person is guilty. This means that the reaction of the state in this case should be softer, i.e. the sentence should be less stringent, and vice versa.

If we proceed from the fact that the causes of crime lie entirely in external surroundings, then we should renounce the use of punishment and move on to the use of a non-punitive impact because the elimination of these reasons is not the object of the impact of punishment. By placing all the blame on the individual for his behaviour, regardless of external surroundings, we consequently affirm that the causes of crime come from him. Criminal policy in this case, of course, should be directed at precisely the reaction of society against the individual, and thus on

increased penalties and strengthening the psychological impact on the population. As we know, medicine teaches that in order to find a remedy against a disease, we must first discover and study the causes of that disease. And so, as long as we fail to understand the true causes of criminal behaviour of the individual and the role of external surroundings, we cannot talk specifically about the usefulness or uselessness of punishment. As Archimedes said: "Give me a lever long enough and a fulcrum upon which to place it, and I shall move the world". It is therefore appropriate to add: "Find the causes, the origins, the mechanism of criminal behaviour of a human. And then we shall put end to crimes".

In addition to the etiological factor (i.e. cause of the disease) and external surroundings, medicine places great emphasis on the development of a disease and the adaptive protective mechanisms of the targeted organism. Therefore, under the same conditions, one is able to commit a crime and another not - as Balzac observed, there are people who are oaks and those who are shrubs. Perhaps by oaks he meant a mighty nature, one who emerges victorious from all temptations, who avoids any failure to take the straight path. How many people exist like this cannot be determined, but we do know that for many, life is a range of concessions where, without the power to compel their surroundings to adapt to themselves, they are forced to adapt themselves to their surroundings, often contributing to the commission of crimes. As Scipio Sighele wrote: "Nature gives everyone a known character which provides a well-known imprint and physiognomy of his behaviour, serving so to speak as an internal impulse by which a human acts in his life. The deeper and more powerful this impulse is, the more the character is defined and stronger and the more likely a person will act in accordance with it without being subject to external influences. It is like a bullet shot from a rifle - the greater the initial speed with which it is expelled, the harder it is to escape in any direction given the influence of obstacles set in the way" [20, p. 99].

Every society has always sought to ensure that no one commits crimes. In looking to Nietzsche to explain this, the answer presents itself as "to make a man to a certain extent needful, monotonous, equal among equals, regular, and hence

assessable” [12, p. 295]. But is a situation truly possible where everyone thinks the same way and lives on equal terms, behaving in the same way to even eating in exactly the same manner?

Moral, legal and religious norms do not allow a person to do whatever he wants - as the situation used to be when he belonged to himself and was equal only to himself because he was not limited in his behaviour and thinking by any moral, legal or religious rules. The history of human development acknowledges that it is impossible to make all people the same, even when specified standards are made available to this effect. Thus it can be argued that the existence of the individual, who acts solely in contradiction to the moral, legal and religious order, was, is and will always be a reality, because it is impossible in any way except perhaps by medical means to suppress or displace that instinct of freedom.

In crime the person demonstrates, in principle, the consciousness of his own freedom which is inherent in him by nature. This repressed violence, once released, pours out the instinct of freedom, which is basically an impure conscience [12, p. 295]. Unfortunately, the objective possibility of punishment is limited because, save lot deterrent properties, it possesses nothing. If today someone wonders why people are really punished, we are able to readily provide the answer that a means of deterrence is needed to suppress that instinct of freedom which is inherent in human nature. By punishing we achieve an increase in fear and suppression of passions, and thus tame the human, although punishment neither makes a human better nor educates him.

The usefulness of punishment for us is hard to determine so long as crime is a phenomenon that is mysterious or secret. It remains inexplicable if we do not know what causes it, and so we need to explain the phenomenon, i.e. to understand its causes, and to recognise it as unreasonable, to recognise it as inexplicable. Perhaps indeed crime is an unreasonable phenomenon. And if so, what is the concept of ‘reason’ that is not understood here? Indeed, will it ever be possible to get to the roots of what pushes a person to commit a crime?

The Scottish skeptic David Hume applied a thorough analysis to the concept of reason and concluded that the causal connection of phenomena is merely the dependence of certain phenomena on others. Considering a phenomenon taking place, he saw that for each occurrence of this, it is necessary that it should be preceded by one or more phenomena. The phenomenon preceded by another is called its reason, and is invariably followed by a consequence. Cause then is nothing other than the sequence of phenomena, and the human mind can observe only this type of sequence of phenomena. The cause of every phenomenon must be recognised only as other phenomenon without which the first would not have happened. To imagine a reason irrespective of the product of its effects is impossible logically so, and would be a nonsense.

Hume's doctrine was taken up by John Stuart Mill although with reservations. Mill sees cause as not being a single phenomenon that has taken place previous to the result but their combination, i.e. the reason should be recognised not simply as a phenomenon but the totality of all. Can we take this theory as a basis to explain the causes of criminal behaviour? We can agree with the generally accepted truth that a phenomenon does not exist without a cause, which is why crime as a social phenomenon is subordinated to a causal link. However here we are confronted by phenomena of quite a different nature and content since crime is distinct from natural phenomena because it is enacted by people, and people as we know will want or not want to commit a crime. In other words, a human being may or may not be subject to any external circumstances and conditions, meaning of course that there will be no result, and the cause is known only from its result. For example, a person may prefer to starve than steal, in which case there are circumstances for the theft but there is no result, hence we have a crime but no reason.

One can cite many examples where human will and circumstances, no matter how powerful, are not subordinated. To be a criminal is not your destiny but your choice, and it is a mistake to assert that "the perpetrator remains a victim of social conditions since his will is determined by conditions" [15, p. 32]. For some reason, philosophy here attempts to attach the question of free will only to the subject of

its knowledge, picking from specific regions of other sciences, in particular psychology and psychophysiology, but in reality the basis of volitional acts lies in the reflex of higher brain centres. Psychophysiology is designed to study the physiological nervous mechanism of volitional acts in the commitment of offences while psychology explores mutual relationships and the mutual dependence of human mental processes in crime such as feelings, desire, consciousness and fear of punishment.

Physiological states and external circumstances affect our consciousness, stimulating desire in the human mind which is the desire to commit a crime. This is why society, being as it is responsible for the environmental conditions and levels of social wellbeing, should also be aware of its guilt in the existence of crime and so mitigate the character of punishment to make concessions to the individual. Naturally, this applies to those countries where the individual and his freedom is assigned the highest value. But let us return to the question about the usefulness of punishment. In recent years there has been a great deal of studies focusing on the effectiveness of criminal punishment and yet, despite the fact that their authors have expressed a wide range of views on the question, in the end they all agree that the formula 'purpose-result' should be followed in determining usefulness.

We also believe that determining the degree of implementation and effectiveness of punishment should be according to the ratio of the set purpose and received result. Here we must of course bear in mind that between the purpose set by society lies the systematic decrease of crime in the state of crime in general, in particular its serious and extremely serious types, and the reality is that there is a considerable distance which needs to be overcome. Approached this way, it is clear there is a set of interrelated circumstances that affect the efficiency of achievements. The complexity of determining the usefulness of punishment is also associated with uncertainty - of the purpose - in contrast to the result which is freely and accurately expressed in numerical terms.

In other words, if the result of achievement can be materialised in this way, objectified through the introduction of appropriate indicators that give it a

quantitative and qualitative certainty, then this cannot be done in relationship to purpose. To measure the value of the purpose, we have to find the ratio of the measured value to the other similar value adopted for the unit. And for this it is first of all necessary to take a comparative look, to find a direct benchmark and then express purposes and results in a single unit of measurement. In order therefore to measure the effectiveness of punishment approximately at least, it is necessary to express the pre-purpose as set by society and the result correlated to the units of measurement needed in developing a system of indicators.

For example, to determine the effectiveness of life imprisonment, i.e. death penalty that is commuted, we can search for comparative characteristics between the indicators of the level of crimes for which the rule provides regarding this punishment. If the level of this category of crime is seen to be increasing systematically, we can assume that the death penalty will be more effective than its alternative. The same method can be used in determining the effectiveness of imprisonment in the case of changes made to its boundaries, i.e. by increasing or decreasing its limits. Thus the measurement of the effectiveness of punishment by means of numerical indicators is impossible but should instead be based on the relative values of low-medium-maximum, worst-average-best, small-medium-large. What I propose, however, is making the distinction of *four* stages of the conditional efficiency of criminal punishment that depend on the outcome of the existing crime: high efficiency performance, medium efficiency, low efficiency and ineffective or zero efficiency.

At the high efficiency level, the result is so positive that it is equal to or close to the ideal, which is the intended purpose. Punishment restrains people from committing crimes and therefore it is evaluated as a useful tool, based on moral principles. At the medium efficiency level, punishment is not capable of keeping a certain proportion of the population from crimes. Crime exists, although its level is low. The usefulness of punishment is average. At the low efficiency level, the result is well below the target. The crime rate is relatively high and stable. Any downward trend is not observed—on the contrary there is a growth of certain

categories of crimes, one reason for which is that the deterrently preventive power of punishment is too weak, and the usefulness of punishment in this respect is questionable.

At the ineffective or zero efficiency level, punishment as a means against the manifestations of crime is not capable of producing positive results because the crime rate is very high and there is a tendency to growth. The futility of punishment becomes a strong argument. However, there is no point in placing all the blame on punishment since punishment's 'ally' so to speak in the prevention of crime is society itself, which is obliged to carry out its appropriate duties. So when we talk about the futility of punishment we should not forget that its options are limited and that the outcome is influenced by numerous conditions and circumstances of the social order, including the economic and political situation in the country. If the purpose is not met, this does not imply that the means is useless but that it can be used wrongly. So if we wish to determine the degree of guilt of punishment in the ineffective confrontation of crime, let us then examine the usefulness of society in addressing the underlying causes of crime and the external conditions that are conducive to crime.

First of all, it is necessary to put into effect social reforms that will create a social order—in science, education, religion, in all forms of labour and power in the different kinds of educational and cultural initiatives that mutually assist each other by internal support. This order must be the union against crime. As F. F. List wrote: “Just as hygiene has managed to extend human life, social reforms, public education and fairness have managed to reduce crime. This is not utopian but a perfectly specific and affordable task” [9, p. 103]. Social reforms clearly depend on the economic situation of society, which should be viewed in terms not only of a rich or poor country but also of the general situation of the population, financially speaking certainly but also spiritually, morally and politically. The growth of the economic situation of society will develop along this principle, and we should not forget that it is only due to the high development of people (moral, economic, cultural, legal, political, psychological, religious and so on) that we can produce a

significant reduction in legal and moral evil. We must act against crime not only with punishment but also with means that paralyse the external conditions that cause the activation of perverse and evil forces within the human body. In other words, we must act not only by deterrence/punishment but by the means capable of destroying the causes themselves, thus changing the character of the factors of crime. For example, the majority of crimes against the individual are determined purely by the temperament of this or that person and there can be no argument against this.

Nevertheless only an individual with a developed view of life, beliefs and rules for action can suppress the stirring of one or more feelings and passions. The more undeveloped and uneducated a human is, the less he will be able to suppress his criminal tendencies. Voltaire once said: "Only the weak commit a crime: the strong and happy do not need it" [24, p. 427]. Hence, the best remedy against the tendency to criminal attacks on the person is the development of the human being's spiritual side, namely his mind and the voice of his conscience. But this falls beyond the objective capabilities of criminal punishment because it is not able to paralyse the evil intention of the person using their own forces alone - punishment does not act on the external cause of the crime but on the inner will of the doer. This is a form of brake, designed to keep a person from committing a criminal act through deterrence and not through eradicating crime as a social phenomenon. In this case the possibilities of criminal punishment are exhausted where, in affecting external conditions, the government influences the direction of the activity of the person. However we should in no way detract from the value of punishment in the prevention of crime. Deterrent punishment in fact opposes the qualities, needs and desires that push a person to commit a crime, warning him of the unfavourable consequences. Therefore B. S. Volkov is right when he writes: "The idea of punishment, even if it does not destroy the intent to commit a crime, in every case plays the role of a counteracting stimulus against which is set the more clearly manifested resistance and activity of an antisocial setting and the force and swiftness of the ruling motives" [4, p. 119].

As noted above, from the moment the law comes into force there begins the process of implementation of the precautionary deterrent impact of punishment, which comes from two directions. It has an overall effect on the consciousness of the population, reminding them of their existence, and it threatens those who intend to commit a crime. This is the realisation of the deterrent impact of punishment which takes the form of a psychological counteraction to the crime rather than a physical retention of criminal intent. Thus it is through deterrence that punishment affects the psyche of a human, prompting feeling of fear in him, forcing him to conform his conduct to the requirements.

It is difficult of course to determine what portion of the population does not commit crime under the psychological influence of punishment, but the consciousness of blameworthiness for an action is an essential part of the psychological content of the volitional process and acts as a countermeasure to anti-social behaviour. Of this there no doubt, as evidenced by daily practice and it is logical to assume that the idea of the severity of punishment, i.e. the power of deterrence, is of major importance in having that braking effect on the intention to commit a crime. But we have to always bear in mind that, just as a remedy does not achieve its purpose if the dose is too large or small, punishment is the same when in crossing a measure of justice. How then can we determine that the choice of the character and limits of punishment are correct, and that they will be useful and effective and therefore morally justified? After all, the legislator only provides in his construction of criminal lawful sanctions a concrete assessment of the degree of social danger of the crime and so makes his decision on this basis. And yet punishment adopted by the legislator of today looks to the future because he cares about the precautionary impact it will have on the entire population.

This implies that in the formation of punishment it is necessary to anticipate the future result of sanctions. At this precise moment there exists a predictive aspect in the construction of criminal legal sanctions. Probabilistic elements fall within the definition of measures of punishment then as, in drawing up sanctions according to the norms of criminal law, the legislator aims to achieve an immediate

practical purpose by punishment. In other words, before him lies the perpetual question: is it easy to identify and implement punishment so that it has an impact on the masses in order to prevent them from committing crime? It may be that it does not matter to a legislator whether twenty or twenty-five years should be the maximum sentence for intentional murder, but it does matter to the offender and even more to the public, because in the first place punishment at the time of its adoption, i.e. legislation, is aimed specifically at society.

Many questions arising today from the utility of punishment are connected directly to an inability to predict future results incurred by decisions related to it. Therefore we must look at the idea of prediction, the function of which will find its definition in the answers to the following questions: What should we expect from punishment? What should we be prepared for? What can we hope for? What can you be certain of? What should I be afraid of? All these questions suggest to us that “the function of legislation is not limited to passive reflection or securing appropriate public relationships”. These functions include “jumping ahead, which is achieved by advancing the vision of regulated social relationships, i.e. a process in which the experience of the past and the present is projected for the future” [6, p. 105].

If we assume that anticipation of events is first and foremost the active maintenance of the goal before its implementation, then the prediction of criminal punishment is in our view the determination of complex options for the long-term development of its impact on the entire population through the use of a wide range of special methods that provide scientific validity and sufficient accuracy of the nominated project. Basically, the problem of forecasting as carried out in the area of criminal lawmaking is to determine the most effective and appropriate punishment, the results of which will become known to us in the future during the process of its implementation.

This means that to determine a specific criminal punishment, i.e. at the time of the construction of criminal legal sanctions, the legislator should create an appropriate programme that includes a clear and specific statement on the stages

and objectives, methods of collection and processing of raw data on the structure and dynamics of criminality in general as well as the specific types of crime. However it should be borne in mind that the prediction of the outcome of criminal punishment poses a major challenge because it can only be revealed in the future and also there is the complexity of the phenomenon being forecast—since we are looking at factors such as the behaviour of the individual and people's psychological perception on the threat of punishment. Thus forecasting in criminal lawmaking is a process that must be constantly repeated. In essence, it is continuous and requires systematic refinement with the accumulation of new data on the effect of punishment on the population and on its effectiveness in achieving this goal. In other words, the process of obtaining information on the working practices of sanctions and their adjustment are constant.

Consequently one of the major conditions for the effectiveness of forecasting in criminal lawmaking is the possession by the legislator of full and objective information on the projected object, on crime and the practical application and enforcement of punishment, on the mechanism and the degree of restraint effects of punishment on the population, and the level of legal awareness of citizens. Without a doubt, the question of forecasting in the construction of criminal law sanctions is especially important when taking into account factors such as the cost of the effects of the practical implementation of a system that is effective or one that has significant adverse effects on punishment. But is such a prediction possible? Assuming science's affirmation that "the future exists and that it is currently largely knowable to humans" [25, p. 96], this is possible - but within a framework of reliability. The point is that what is predictable lies in general properties and patterns that reflect on stable cause-effect relationships, although there is no absolute determinism for these since there remains the uncertainty of the specific implementation of laws that cannot be resolved through the process of forecasting. This means that an accurate prediction of the results of criminal punishment which looks to the future is impossible because single events, which include the impact of punishment on a particular individual, cannot be the subject

of forecast. In many cases, this inability to control the direct experimental results of punishment leaves the question open to the confirmation of the correctness or incorrectness of conclusions, because at this stage of scientific development there is no sufficient logical and practical means of resolving such a problem.

The fact that forecasting the future results of punishment differs due to the fact that we cannot rely on any 'immediate' practical test of truth, validity or reliability of the predictions, since there is a shift in time to testing the theory in practice from the process of its formation. The presence of such a time lag creates some uncertainty as to the moment of the final test of the theory, and clearly the material objects that it reflects may undergo substantial changes. However this is not the basis for refusing to predict the effects of punishment in criminal lawmaking, and yet, as Poincare warned, "it is better to anticipate without absolute certainty than not to foresee at all" [17, p. 159].

In this or any other field, the predictive function is manifest in different ways - the situation in physics, for example, is quite different to that of history or philosophy, that of medicine different to sociology or jurisprudence, yet in every science this function appears necessary. There are implications in the fact that the horizon in legal science is extremely broad and so it is able to function as practically applied problems of legal development as well as global fundamental, large-scale problems of future changes in the legal system: the prediction of the development of the legal system and planning of legislative activity in the long term [6, p. 282].

Experts started to talk for the first time about legal prediction in the late 1960s-early 70s. The writers who focused on jurisprudence considered legal prediction as a type of social forecasting [19]. In particular, M. D. Shargorodskii wrote: "The forecast of social phenomena can cause a state or social or political organisation and so on to put into effect targeted actions, in particular the publication of new legal norms, which would lead to changes in the projected public processes, effecting changes in terms of acceleration in their creation, conversion, management and other modifications. Thus there appear projections

with an informational feedback connection. Between these projections and human activity there is also an informational feedback connection, which has a special interest for legal science” [23, p. 42].

Although forecasting at the present time has entered jurisprudence, unfortunately it is limited mainly to the implementation of diagnostic and etiological features, finding itself less concerned about its prognostic duties. Nevertheless, the feasibility of prediction in criminal lawmaking makes it possible to increase the coefficient of the usefulness of punishment, and thus make it more effective.

When we consider the question of the usefulness of punishment and seek ways to enhance its effectiveness, it becomes clear that punishment is a dynamic process, consisting of inextricably interconnected and interdependent stages: punishment in its pure form, i.e. criminal legal sanction, appointment of punishment, and execution of punishment. The level of morality of punishment therefore needs to be evaluated not only according to its nature and severity as defined in the law but also according to how it is implemented in practice. In legal literature this dynamic process is rightly called punishment.

Unfortunately, we have to note that while we have paid close attention to the individual parts and steps of the process, we have ignored the fact that “knowing a part without knowing the whole is as impossible as knowing the whole without the knowledge of its parts” (Pascal) [14, p. 536]. It is therefore important to turn our focus to the concept and spirit of the process of punishment, because the effectiveness of criminal punishment cannot be evaluated solely on the results of a single stage of the process of punishing but should be determined by the achievement of the main and only goal that society sets, namely the prevention of crimes. We know that the shortcomings of criminal lawmaking in determining the character of punishment in the law of the future are also hindered by the inefficiency of law enforcement activities.

One of the first providers to distinguish punishment as a concept and as a process of punishing was M. I. Kovalev [7, p. 124], although at the beginning of

the last century the so-called dynamic theory of criminal punishment was also widespread in Germany. The same conclusion has now been reached by other writers [8; 11; 21]. Of course the statement above by Pascal applies equally to punishment as a part and punishing as a whole. If a system is commonly understood to be a set of interrelated elements that make up a whole which has a new integral quality that is not reducible to the properties of any single element, then it follows that punishment should be considered as a system, because it consists of a comprehensive set of three interconnected elements: as a threat stipulated in criminal law, retribution as the realisation of justice, and that which punishes in the process of execution of the sentence.

Any system is essentially a set, composed of multiple elements between which there exists a certain relationship. Any system has a mandatory feature of integrity, as noted by B. V. Ahlibinsky [2, p. 150-151] and N. M. Amasov, who emphasized that “every system is a certain amount of elements combined in such a way that ensures the integrity of the function” [1, p. 4].

Now the process of punishing should not be seen as a simple connection of different elements but as a system that has integrity, organisation and feedback between those elements. The process of punishing is a structured integrity whose internal elements (punishment threat, punishment retaliation, punishment retribution) have a clear structured character that are interrelated and function in order to achieve a certain result: the prevention of crime. The elements of the subsystem of this system are holistic to the extent that the absence of one will destroy the whole system of punishment. There can be no retribution if there is no threat, just as there can be no retaliation without the administration of justice. The efficiency of the system of punishment depends on the efficiency of each subsystem taken separately and, more so, on their level of interaction. In other words, the elements of the system of punishing depending on each other, and if one of them is incapable and ineffective in achieving the goal set by society for crime prevention, it will ailed the result of the entire system and (he oilier subsystems individually along the chain. Thus, the components of the system of punishing do

exist in their own right but are characterised by the presence of feedback connections. The legislator may consider threat as the best punishment, but if at the same time it functions along with unfair justice or the ineffective execution of punishment then of course we cannot expect a positive result in punishment.

It should be noted that the system of punishment is itself part of a broader system, i.e. state policies on crime prevention where in addition to criminal policy there is also social policy. At the same time the subsystems of the systems of punishing are regarded as independent systems, each with its own elements. Does this mean that the system of punishing is manageable? We know that all social phenomena as dynamic systems are distinguished by their capacity to continuously change, develop and improve. This is found in the system of punishment, which is periodically subject to change due to objective and subjective reasons. Unfortunately, at times these changes have a negative impact on the final result of the prevention of crimes, which indicates an increase in crime.

In terms of connections, systems are divided into strictly deterministic and probabilistic. These two extreme cases are implemented in a highly rare objective reality and represent our idealisation of the real systems, most of which are in fact located in between the two limiting cases. The system of punishment relates to social organisations and therefore is characterised by the probability of achievement of results, i.e. the predictive nature. For this reason, it is not fully amenable to purposeful influence and so any system of punishment is not entirely controllable, and all its subsystems will also be characterised by the achievement of a set goal which is the predictive nature. This also applies to the threat of punishment and to the appointment and execution of punishment. Limited control will not allow us to create a highly effective system of punishment or to achieve the optimum level of crime prevention. This does not mean that we have to sit on our hands, although criminal law has unfortunately paid far too much attention to studying the theoretical problems of punishment, and continues to do so, yet has completely overlooked research into the theoretical and practical ways of improving the efficiency of an integrated system of punishment. The usefulness of

punishment and thus its moral essence depends largely on the specific characteristics of each nation's psychology that has taken thousands of years to develop.

We know that the psychology of a people can be applied in a range of cases, enabling us to understand historical, economic and cultural features without which they would be completely inexplicable. The psychological component of a people implies not only their concept of the world and life but also the rules for their behaviour in living together and the forms and methods of regulation of relationships between the members of society. Studying the psychology of a people is more desirable from a practical point of view rather than the theoretical, and so the knowledge of the psychology of his own people would appear to be the most important condition for the legislator in determining the moral principles of punishment.

Now, there is a certain something that unites individuals into a mass, which makes them form a unity. This binding element, in addition to general morals, is essential and beneficial for all members of society, being the rule of law, respect for the law, the law in itself. Any move away from this rule must be condemned by society, firstly from a moral point of view and then from the legal. Again, this is possible in a society that bears high moral values and a high level of development.

In psychology, there is the belief that the 'mass' is capable of critically influencing the spiritual life of the individual, which results in spiritual change. Gustave Le Bon in his work *The Crowd: A Study of the Popular Mind* notes that in the psychological crowd a strange feature is to be found where, whatever the type of constituent individual and no matter how similar or dissimilar is their lifestyle, occupation, character or degree of intelligence, with the single fact of their transformation into a crowd they acquire a collective soul by virtue of which they act and feel completely differently to how each individual would have normally feels, thinks and acts [10, p. 7].

There are ideas and feelings that occur or become effective only from individuals connected in this way to the masses. From Le Bon's observation we

conclude that the psychological impact of the mass of population is more effective than the psychological effect of punishment. Based on purely anatomical features, it was possible to establish that the human species is made up of many completely different races and, most probably, different origins. According to Le Bon, no matter what a human does, he will be always first and foremost the representative of his race. That reserve of ideas and feelings that all individuals of the same race carry with them since birth form the soul of their race. Invisible in its essence, the soul is highly visible in its manifestations since in reality it governs the entire evolution of a people [10, p. 13]. Every nation has a mental organisation that is as stable as its anatomical organisation. Undoubtedly, environment and education influence the more superficial character traits but “do not affect its basic features, or else touch on them only in extremely slow (hereditary) accumulations” [10, p. 20]. We can give a person knowledge set in the field of law, cultural dialogue, morality and so on but it will not have a strong influence on his character. As the saying goes: “If black people and white people were snails, then every zoologist would argue that they constitute different species that could never have come from the same original pair from which they are gradually moving away”.

All this testifies to the fact that knowledge of the psychology of your own people is a powerful tool in the hands of the legislator in creating an effective system of punishment as well as determining attitudes towards the death penalty especially. Such knowledge is desirable and possible not only theoretically but also to a greater extent from the practical aspect. Different nations cannot feel think or act the same way that is clear. The gap between the mental component of various nations explains why the same system of punishment cannot influence people with different psychological characteristics in the same way.

Psychology argues that the national character is the most important feature through which we may distinguish the psychic mindset of people and nations. It is the nature of a people and not its mind that determines its development in history. We must not forget that our ancestors influence our actions and behaviour along with the influence of our parents and environment. Therefore, in a modern nation it

can be extremely difficult for its representative to disobey laws, customs and traditions which were obeyed by his ancestors even if they contradict the current legislation. This means that a system of punishment must not contradict but rather take into account these circumstances to the maximum. And so, of course, the causes of human behaviour, including criminal and aggressive, are influenced by the physiopsychological characteristics of the individual. In consequence, the means of counteraction must be distinctive and specific but not formulaic in the form of psychological influence and deterrence.

References

1. Amasov N.M. Modelirovanie slozhnykh system [Simulation of complex systems]. Kiev, 1968, 88 p.
2. Ahlibinsky B.V. Informatsiya i sistema [Information and system]. Leningrad, 1969, 200 p.
3. Beccaria C. O prestupleniyakh i nakazaniyakh [On crimes and punishments]. Moscow, 1939, 464 p.
4. Volkov B.S. Motivy prestupleniy [Motives of crimes]. Kazan, 1982, 152 p.
5. Hegel G.V. V soch. T. VII [Hegel G.V. Essay, vol. VII]. Moscow, 1943, 374 p.
6. Kerimov D.A. Metodologiya prava. Predmet, funktsii, problem filosofii prava [Methodology of law. Subject, functions, issues of philosophy of law]. Moscow, 2011, 560 p.
7. Kovalev I.M. Sovetskoe ugovnoe pravo [Soviet criminal law]. Sverdlovsk, 1971, 146 p.
8. Korobeev A.I., Uss A.V., Golik V. Ugolovno-pravovaya politika [Criminal legal politics]. Moscow, 1991, 241 p.

9. List F.F. Zadachi ugonoy politiki. Prestuplenie kak sotsial'no-patologicheskoe yavlenie [Tasks of criminal policy: crime as a socio-pathological phenomenon]. Moscow, 2004, 109 p.
10. Lebon G. Psikhologiya narodov i mass [Psychology of people and masses]. Moscow, 2000, 124 p.
11. Martsev A.I. Dialektika i voprosy teorii ugolovnoogo prava [Dialectics and questions of the theory of criminal law]. Krasnoyarsk, 1990, 128 p.
12. Nietzsche F. Po tu storonu dobra i zla. K genealogii morali [Beyond good and evil: the genealogy of morals]. Moscow, 2001, 829 p.
13. Osipov P.P. Teoreticheskie osnovy postroeniya i primeneniya ugolovno-pravovykh sanktsiyi [The theoretical bases of the construction and application of criminal legal sanction], Leningrad, 1979, 134 p.
14. Pascal Blaise P. Mysli. Malye sochineniya. Pis'ma [Thoughts, Letters and Minor Works]. Moscow, 2003, 564 p.
15. Platonov I.V. Populyarnye lektzii po ugolovnomu pravu [Popular lectures on criminal law]. S. Petersburg, 1901, 390 p.
16. Poincare H. Nauka i gipoteza [Science and hypothesis], Moscow, 1904, 240 p.
17. Pravo i sotsiologiya [Law and sociology]. Moscow, 1973, 269 p.
18. Rahimov I.M. To an issue on "crisis of the punishment". Juridical Sciences and Education, no. 40, Baku, pp. 186-210.
19. Safarov R.A. Prognozirovaniye i yuridicheskaya nauka [Forecasting and jurisprudence]. Sov.gos i pravo [Soviet state and law], Moscow, 1969, no. 3, pp. 93-102.
20. Sighele S. Criminal'naya tolpa [The criminal crowd]. Moscow, 1999, 128 p.
21. Sych K.A. Lishenie svobody kak rodovoe ponyatie i vidy ugolovnoogo nakazaniya: opyt teoretik-pravovogo konstruirovaniya [Deprivation of freedom as generic concept and kinds of criminal punishment: experience of theoretical and legal designing]. Moscow, 2016, 280 p.

22. Upravlenie. Sotsiologiya. Pravo [Management. Sociology. Law]. Moscow, 1973, 271 p.
23. Shargorodskii M.D. Prognoz i pravovaya nauka [Forecast and legal science]. Pravovedenie [Jurisprudence]. Moscow, 1971, no.1, pp. 40-50.
24. Entsiklopediya aforizmov [Encyclopedia of aphorisms]. Moscow, 2003, 714 p.
25. Fourastie J. Die Grosse Metamorphose Des 20. Jahrhunderts, Dusseldorf, 1964.