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Theoretical and practical recommendations on improving of legislation on criminal punishment

Abstract: Before defining the character of punishment, the legislator should take into account the level of development of the nation in its broadest sense. In other words, punishment must match the level of public morals and promote human values on the one hand, and the features of character, psychology, traditions and customs of the people on the other. It is harmful to blindly copy the practice of punishment in other countries, particularly in Europe, unless this is for the sake of political self-promotion of course.

The public impact on offenders is effective where the level of ethics and morality of society is high. It is still too early to talk about shifting the centre of gravity from the deterrent of the preventive impact on public shaming and the moral pressure of society. We therefore should not forget that punishment still offers the strongest means to prevent crimes.

Keywords: criminal punishment; legislator; crime; morals; recommendations.

The adoption of criminal punishment is without doubt a complex process that requires a very high level of competence and ability from the legislator to avoid the presence of a large number of objective and subjective reasons that would adversely affect the formation of punishment. We therefore consider it appropriate to recommend the following circumstances and conditions, based on the theoretical findings of the legislator in the preparation of the penal system as well as the character of some of its types.

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1. Before taking any decision on punishment, we should be fully aware not only of its legal requirements but also, to a large extent, its moral significance. We should inform the public because it is the people that obey the law who must be its 'creator' (Rousseau) [3]. Modern domestic legislative criminal policy, unfortunately, does not practise preliminary assessment of enacted law on criminal punishment even though the subject has been the focus of special attention since Roman times. This was when a draft on criminal punishment would be written on a wooden board and exhibited in a public place where the citizens were given the opportunity for a certain period of time (twenty-four days) to discuss the project.

2. Before defining the character of punishment, the legislator should take into account the level of development of the nation in its broadest sense. In other words, punishment must match the level of public morals and promote human values on the one hand, and the features of character, psychology, traditions and customs of the people on the other. It is harmful to blindly copy the practice of punishment in other countries, particularly in Europe, unless this is for the sake of political self-promotion of course. We shall repeat the words of the great Cesare Beccaria, which have not lost their value even today: "Upon the rough soul of the people, just released from a state of savagery, there must be more powerful and more sensitive impressions" [1].

3. The death penalty, as a psychological punishment, is a repulsive and immoral measure from a moral point of view. It is contrary therefore to the livelihood of the nation, the level of which may be high and which therefore may deny this punishment. However from the point of view of common sense, the death penalty is necessary and useful where the crime rate is high. While denying the death penalty from the standpoint of humanism and morality, we can argue at the same time that this punishment has the highest quality of intimidation. It is premature and unfair to reproach those countries where the existence of the death penalty is a consequence of their national traditions and religions. We believe that



it is right if legislation provides two kinds of punishment for premeditated murder under aggravating circumstances: the death penalty and life imprisonment. Depending on the severity of the crime, i.e. the consequences, the court will have the choice in determining punishment: one type when five or more people are killed as a result of the murder, another when one or two.

4. Where possible, we must strive for punishment to be similar to the character of the crime, although it is impossible to determine the ideal just punishment since we do not have the gift of the Almighty. Unfortunately, criminal law has not yet been able to provide a precise and universal ladder of crime and punishment for the legislator. Hence for us the only true measure is the harm that is wrought by crime, while we should not forget Beccaria's assertion that "there should be proportionality between the crime and the punishment: After all, just as a medicine does not achieve its purpose if the dose is too large or too small, the same is true for punishment when it becomes a measure of justice. There will come a time when the duty of apportioning punishment to the offence will be removed, at least partially, from the legislator, which would mark a profound and significant revolution in every area of criminal law. And this is done with the help of the mathematical methods offered through information technology.

5. The public impact on offenders is effective where the level of ethics and morality of society is high. It is still too early to talk about shifting the centre of gravity from the deterrent of the preventive impact on public shaming and the moral pressure of society. We therefore should not forget that punishment still offers the strongest means to prevent crimes.

6. Legislators should bear in mind that punishment has forecast essence, and so any decision on penalties that is 'plucked out of the air' without scientific justification must in reality be based on purely formal criteria. Consequently, the successful solution of the problem is the ability to predict the expected results from punishment, preliminarily and as fully as possible. To do this, first of all, we need



to painstakingly and comprehensively examine the state of crime in the country both in the past and the present, as well as the practical application of criminal punishment.

7. In preparing draft law, international experience on the application of punishment as a means of combating crime should be researched and taken into account. In particular it is more useful for serious violent crimes as well as for other types of crimes against a person to use the more severe punishments because the rationale for these is linked to his will. Therefore, punishment against such acts is a strong opposition. At the same time the need for isolation is eliminated from certain categories of offenders who have committed non-violent crimes - economic, impulsive, crimes related to drug use - because the cause of these crimes is largely dependent on external circumstances. By means of punishment in this case we shall not achieve the desired results.

8. We know that the formation of criminal punishment, being objectively determined by objective reality, is nonetheless still subjective since it is carried out by people who consciously pursue the goal of creating and adopting an effective punishment that can prevent crime. In other words, the process of forming criminal punishment is inconceivable without the will of human beings, which offer it up to society and approve of this means of psychological impact on the population.

Consequently, criminal punishment is the product of conscious activity. From this it follows that the correct decision on the creation of punishment depends largely on the legal and general culture of the legislator and his work, and on not superficial primitive attitudes towards their professional mission. As Lublinsky wrote in *Technique, Interpretation and Casuistry of the Criminal Code*, the word of the legislator is something that is possible only for a person endowed by the powers of the Almighty, able to create an intuitive holy order that consists of a living accordance with the spirit of the people and the forces of reality [2].



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