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JUSTICE IN RUSSIAN CRIMINAL LAW

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Abstract

There still remains a problem of co-relation of an ordinary understanding of justice with a professional judicial view; therefore it seems appropriate to compare sociological and legal approaches to the issue of justice through the example of the institute of criminal sentencing. If the measure of punishment is not sufficient, the scales of justice will not balance; if the measure of punishment is excessive there will be no stability and justice will not be restored. The purpose of this research is a comprehensive review of the principle of justice in the criminal law of Russia and the identification of its main components. To achieve this goal it is necessary to analyze the legal component of justice and give its main features. It is also necessary to analyze the social component of justice. The goal of the research will be achieved within matching of social and legal components of the principle of justice. We operated on the following methodological principles to achieve this goal: objectivity concept, deterministic principle, historical principle, holism, the principle of consistency, structural principle, functional principle, hierarchy principle, comparative principle, and principle of pluralism in the interpretation and understanding of law.

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1. Introduction

Law theorists, sociologists and political experts show a great enthusiasm for the issue whether criminal policy corresponds to public opinion particularly concerning imposition of punishment (Jesper & Roberts, 2014, p. 23). The term ‘justice’ is closely connected with stability in society. The problem of justice has social, economic and psychological aspects (Epikhina, 2014, p. 17). Sociological approach to social justice involves public opinion survey in respect of justice in such society in general or justice of any establishment or institution (Epikhina, 2014, p. 35). Thus, Mareeva (2015, p. 169) in her research found out that Russian people do not very much believe in the possibility of creating a just society in Russia. In his turn, Veber (2015, p. 260) singled out the following objective criteria of social justice in the context of economic development: a) equal launch opportunities for individuals; b) social support of those whose opportunity to achieve the desired result is limited by reasons beyond their control (Veber, 2015, p. 262). In view of psychological aspect of justice one may lay emphasis on the concept of ‘justice of the result’ that is subdivided into distributive and punitive elements. The first one is related to distribution of rewards, and the second – to punishment (Gulevich, 2011, p. 11). Meanwhile, you may not ignore a legal approach to the concept of justice as it is based on all the above mentioned aspects of justice. Thus, in sociology we find an idea that “one may speak of justice (or injustice) of this or that action, view, relation or a particular person” (Epikhina, 2014, p. 211). A different approach is employed in law. Thus, Gordonova (2014) states: “Addressing justice as a mete-wand for the quality of social values, legal concepts and acts, one should assess legal regulations in their harmony with other legal principles in the context of justice... Nowadays, justice of legal regulation may become a mete-wand for social norms” (p. 112).

The term ‘justice’ is often used in legislation: Article 6 of the Criminal Code of the Russian Federation (hereinafter referred as ‘RF CC’) contains “Principle of Justice”; Article 60 part 1 of RF CC provides that a just punishment shall be imposed on a guilty person. In fact, a crime results in violation of law and order and lack of stability, that lead to injustice. How society comes back to stability, how to right a wrong? The answer is: by sentencing for crime. The measure of punishment may be stricter or milder, but for justice to have been met, punishment must fit the crime.

2. Problem Statement

Therewith, there still remains a problem of co-relation of an ordinary understanding of justice with a professional judicial view; therefore it seems appropriate to compare sociological and legal approaches to the issue of justice through the example of the institute of criminal sentencing.

3. Research Questions

If the measure of punishment is not sufficient, the scales of justice will not balance; if the measure of punishment is excessive there will be no stability and justice will not be restored. So, how much ‘punishment’ is necessary to balance justice with crime committed? (Hirsch & Ashworth, 2005, p. 23). If to address the issue from the legal viewpoint, we may paraphrase it as follows: what are the criteria of justice in imposition of punishment? (Duus-Otterström, 2017, p. 1068).

4. Purpose of the Study

The purpose of this research is a comprehensive review of the principle of justice in the criminal law of Russia and the identification of its main components. To achieve this goal it is necessary to analyze the legal component of justice and give its main features. It is also necessary to analyze the social component of justice. The goal of the research will be achieved within matching of social and legal components of the principle of justice.

5. Research Methods

We operated on the following methodological principles: objectivity concept, deterministic principle, historical principle, holism, the principle of consistency, structural principle, functional principle, hierarchy principle, comparative principle, and principle of pluralism in the interpretation and understanding of law.

In the research we employed private methods: legal analysis, legislative principle of consistent technique, legal comparativistics, expert evaluation method, as well as precise sociological method. With help of specifically created questionnaire which includes open-ended questions there was conducted a survey of three hundred fifty federal judges from twenty regions of the Russia to recognize how fair punishment could be achieved. Questioning was conducting during 2017 year by sending of questionnaire to the judges. Studying of results of questioning and conclusions was made in January 2018. Also there were selectively researched some of the sentences which were passed in the regions where questioned judges worked. The data obtained in the course of the sociological research were checked against case materials in every specific region and against the results of related sociological research obtained by other scholars. It should be emphasized that conducting of a survey among judges has its distinction as the questionnaire contained the questions concerning assessment of the criteria of just punishment by judges; it allowed us to appraise how they decided on type, length, and amount of penalty in each criminal case.

6. Findings

6.1. Justice: sentence and public response

In July 19, 2010, Togliatti central district court found Kruglova guilty in committing a crime provided for in part 4, art. 159 RF CC and gave her custodial sentence in a general penal colony for a term of three years, though Kruglova had four kids and was pregnant with the fifth. Mass media communications, first and foremost the Internet, addressed the issue of selectiveness of domestic court system drawing a comparison between the Kruglova case and the Shavenkova case heard by Kirovsky district court in the city of Irkutsk in August 17 of that year. Shavenkova was convicted and sentenced to three years imprisonment under part 3, art. 264, RF CC; but taking into account that she had a two-year-old kid the court set aside the sentence till the kid of the defendant is 14. (Klenova, 2011, p. 60). For the foregoing reasons, we might conclude that while setting aside a sentence to Kruglova, Samarsky regional court acted in the best interests of the public, and this resulted from the situation of social unrest.

Later cases are better related to criminal law and are politically motivated, though we shall make an attempt to discuss them leaving the political background behind. Therewith, nearly two thirds of Russian people (63%) consider that in the country there are those convicted for their political views and determination to participate in political life. We believe that the sentences that are politically motivated and the penalty imposed for them may automatically be considered as unfair. Let us consider the case: in September 16, 2019, Tverskoy district court of the city of Moscow passed a sentence to Pavel Ustinov Gennadyevich charged with a crime under part 2, art. 318 RF CC in the following circumstances: in August 3, 2019, in or around 3-30 a.m. near a building located in Tverskaya street 18, in Moscow, a policeman from Special Purposes Mobile Union of Russian GU FSVNG of the city of Moscow initiated measure for taking Ustinov P.G. into custody; while doing it he took Pavel's left elbow with his right hand, and Ustinov being aware of public danger and illegality of his own acts, as well as of the fact that he was dealing with a person in a position of authority performing his job, with guilty intent to use violence dangerous to health, actively reacted against him; by doing so, he violently put his right hand on the left hand of the victim and by force of his body exercised dragging pressure on the wronged person's left hand shoulder joint, by this inflicting bodily harm in the form of dislocation of the left humeral head, so moderately severe hurting him. Pursuant to the sentence, imposing punishment in the form of penal custody for a term of three and a half years in a general penal colony, the court took into consideration personality data of the person brought to trial, certificates of good conduct from his educational institution, from the place of compulsory military service and in private life, as well as personal surety and the fact that Ustinov P.G. was raised in a multi-child-family, that together are considered to be circumstances mitigating punishment; nevertheless the court also had regard to circumstances, character and public danger of the crime .

The imposed sentenced made great front page headlines; art community sent an open letter to the President of the Russian Federation in defense of Pavel Ustinov; large-scale flashmob was held in social networks, even the head of Federal National Guard Troops Viktor Zolotov made a statement that it is the court that makes a decision, but as for him, he would have charged with a two-year suspended sentence .

Under public pressure RF Procurator General filed an appeal petition against the sentence precisely on the grounds of unfairness of the sentence. Judicial panel of Moscow city court considered the appeal petition and arrived at a conclusion that it is possible to substitute the grade of the offence for an offence of minor gravity. i.e. from grave crime to a medium-gravity crime, and mitigate the sentence to Pavel Ustinov up to one-year restrain of liberty taking into account the information presented to the appellate court on the invalidity of his father, certificates of good conduct from his place of residence, as well as the saying of the wronged person that the sentence imposed on the defendant was too severe. Having regard to the personality of Ustinov P.G., taking into account the character and level of public danger of the crime committed, as well as the effect of the punishment on the life conditions of his family, the judicial panel drew a conclusion that correctional rehabilitation of Ustinov P.G. is possible without restrain of liberty, and, therefore, imposed a conditional sentence .

The example case might be considered a triumph of justice in a social aspect as an imposed unfair sentence was considerably mitigated under the pressure of public opinion. Such a conduct of the state might be viewed as a drawback, though the compromise was reached in relation to original injustice. Though, there exists an opinion that if society wishes more severe (or more lenient) sentences than a criminal

objectively deserves it would be better not to raise (or reduce) a custodial penalty, but enlighten the public so that our citizens could understand which rules of imposition of penalty serve to attain justice (Duus-Otterström, 2018, p. 131). Pursuing the point, it is necessary to form public concept of justice in the way required by the law.

6.2. Justice of punishment: judicial viewpoint.

In the view of the foregoing we may conclude that just punishment is heard and considered in society, but generally in case of high-profile criminal matters; the state has no scope for carrying out public expertise on every sentence, as it would violate the foundation of justice. We fully agree with S. A. Galaktionov (2004, p. 14) that “unjust punishment is more sensitive to the public than unjust honor. Passing an unjust sentence, a judge undermines public confidence in justice, so the principle of justice in criminal law is particularly important. Researchers of judicial manpower point out that the most valuable asset of the judiciary is the trine: “legitimacy – defense of rights – justice”, where justice lies at the center of it; it is in terms of this concept that society understands ‘law’ and ‘justice’ (Volkov et al., 2012, p. 76). One may contemplate on public level of justice for ages, though criminal law provides for criteria that just punishment should match. Therefore, criminal law that actively employs the concept of ‘justice’ provides for supporting tools while imposing sentences in criminal cases. We suggest a term ‘criterion’ for supporting tools ensuring justice in the legal system. ‘Criteria’ is *indicia*, grounds, decision rule for appraisal of something for compliance with due claim. As to etymology of the term ‘criterion’, the word itself originates from a Greek word κριτήριον that means the ability to differentiate, instrument for judgment, measure. The word ‘κριτήριον’ has the following variants of translation: instrument to solve a problem, litigation venue, and is derived from ‘κριτής’, that is translated from the Greek language as ‘a judge’. Among the criteria for justice we might define the following (under art. 6 RF CC): public danger of a crime, personality of a guilty person, and the circumstances of the offence. In our view, there exists a certain mechanism by which the above-named criteria affect the final penal measure. Then, the court is to decide on several types of punishment in accordance with the principle of justice in course of imposition of penalty, and finally, it must assess the penalty acting with maximum judicial discretion; the criteria take on a role of a guide for a judge, the court establishes the circumstances characterizing every criterion and takes their assessment. Assessment is a means by which the court decides on significance of this or that criterion and its impact on the penal measure imposed for the purpose of mitigating the sentence or making it more severe. Criteria assessment is some kind of a basis for administering punishment.

7. Conclusion

With help of specifically created questionnaire which includes open-ended questions there was conducted a survey of three hundred fifty judges from twenty regions of the Russia to recognize how fair punishment could be achieved.. The judges surveyed demonstrated no precise understanding of the character of public danger: 22% of the respondents gave no answer at all, 25% pointed out the object of crime, 23% named the category of a crime, 15% - the form of guilt, 8% - the degree of harmful consequences. Along with the presented factors, we got the following answers: aggravating and mitigating

circumstances, degree in the commission of crime, minority status of a guilty person, repetition of crime, modus operandi, motive of crime, public mind (respond), particular circumstances of crime, conduct of a person affected, peculiar ferocity and cynicism of crime. As it is clear from the survey, many of the judges confused the concept of character of public danger with its degree.

While answering the question: “In your opinion, what factors have an impact when the court considers the degree of public danger of a crime committed?”, for the most part the judges pointed out several factors. The majority of the respondents (35%) laid stress on harmful consequences (their degree), nearly as much (34%) mentioned nature and extent of damage (harm), whereas 15% of the respondents pointed out both damage and consequences, that demonstrates the fact that judges take these concepts separately (Frase & Roberts, 2019).

The next in popularity is the answer ‘modus operandi’ – 25%, then goes ‘role of a guilty person in committing a crime’ – 18%. 14% of the respondents named purposes and motives of crime, 7% - degree in the commission of crime, and only 3% pointed out degree of execution of criminal intent. Less common were the answers: gravity of offence – 5%, environment – 5%, characteristic factor – 4%, the number of persons affected – 3%, personality of a guilty person – 3%, scene of crime – 3%, character references of person affected – 3%, mitigating and aggravating circumstances – 2%, reluctance to pay damages – 2%. 1% of the respondents underlined the following factors: recidivism, age, affected person’s opinion, time, appropriation of corporate opportunities.

The third question in the questionnaire was “What factors and circumstances have priority for you in pre-sentence report and what is its impact in the process of individualization of punishment?” The most typical answers were: 47% - prior conviction, at that only 4% answered that expunged conviction and spent conviction must also be considered, 8% pointed out the fact of prior criminal record, 39% stated that for them family status plays its role, 32% named state of health, 30% - age of a guilty person, 29% - regular job. 24% of the respondents indicated the need to consider various personal characteristics of a guilty person (from a district militia inspector at the domicile, from the job, from educational establishments, from neighbors), 22% mentioned caring responsibilities. Other factors that were offered to the respondents were less popular: confession of guilt, penitence – 12%, attitude to what was done – 11%, permanent residency, registration – 8%, post-criminal conduct – 8%, gender – 7%, motives and aims – 4%, previous administrative liability – 5%, behavior in private life – 5%, behavior at the place of residence – 5%, behavior prior to crime – 5%, social status – 4%, work ethic – 4%, property status – 3%, conduct of a guilty person – 3%, social adaptation – 3%, consequences of crime – 3%.

Survey based results, as well as their correlation with opinion poll findings, that were conducted by independent centers concerning justice of sentences on high-profile criminal cases mentioned above became the basis for the following theoretical conclusion: in the process of imposing a sentence to a guilty person justice has two main levels: social and legal. Under social level of justice we understand whether the measure of punishment is reflected in the public consciousness as just or unjust. Legal level of just punishment concerns the court’s assessment of justice criteria provided by law (Lappi-Seppälä, 2017, p. 112).

On the basis of criteria assessment and particular factors characterizing each criterion, court imposes such measure of punishment as is considered to be just. Therewith, to achieve justice of punishment it is

imperative that justice be realized both on social and legal levels. It is legal level that we propose to go by, as public appraisal of punishment is made after the court has analyzed all criteria of justice, and on those results final measure of punishment is assessed.

Thereby there are some possible ways how justice is realized in imposition of penalty sphere: 1. Court made correct conclusion about criteria of justice specified in law but society does not believe in fairness of punishment. Therefore social level of justice is unrealized. The reason of such phenomenon could be deformation of public opinion about certain legal processes but the role of judge in imposition of penalty is to strive to realize public will and reduce public objections regarding the sentence; 2. Court made incorrect conclusion about criteria of justice and punishment couldn't be fair, though because of deformation of public opinion such punishment could be perceived as fair despite the fact that is not; 3. Finally the most favorable case when sentence corresponds to all legal criteria, has public approval and justice ultimately could be called as realized and punishment could called as fair. But the question is how to reach this ideal? (Tonry, 2020, p. 7). As for legal level, it is no problem – court shall examine all circumstances of the case and weigh criteria of justice provided by law. Thus, the problem lies in lack of formalized criteria of public justice. But the essence of ideal lies in the idea that one should endeavor to attain it – it is a vector of sound progressive development.

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