

6. Savchenko A. V. (2002). *Motyv I motyvatsiia zlochynu* [Motive and motivation of a crime]. Kyiv: Atika [in Ukrainian].

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CONCEPTS AND SIGNS OF THE PUNISHMENT

Before giving a definition of punishment it is necessary to find out its place in the structure of social relations. Punishment is first and foremost one of the forms of responsibility. Responsibility can be considered as a social relationship between the subject (citizen, collective) and the system of social control (in the person of its bodies) in connection with the behavior carried out by this subject. Responsibility can be understood in a social plan. In this case, it serves as a kind of relationship between people about their responsibilities and the extent of their implementation. Punishment is one of the forms (basic) of criminal liability and is part of the system of measures of criminal law influence.

Conditional these measures can be divided into two groups: not related to criminal liability (compulsory measures of educational and medical nature) and those carried out within the framework of criminal liability (punishment, conditional non-use of punishment, release from punishment). In the science of criminal law, the punishment was regarded as the most severe measure of criminal law, which, being the main form of criminal liability of a person for the crime committed by him, is appointed by the court on behalf of the state in the conviction and consists in the restrictions provided for by the criminal law or deprivation of his rights and freedoms, and also entails a special criminal-legal status of a person – a conviction. M.Y. Korzhansky somewhat differently formulates the definition of punishment. In his opinion, punishment is a measure of state induced by the court that causes certain losses and expresses on its

behalf the denial, obedient, legal and moral assessment of its conduct.

In accordance with Part 1 of Art. 50 CCU punishment is a measure of coercion, which is applied on behalf of the state by a court judgment to a person convicted of a crime, and consists in the restriction of the rights and freedoms of the convicted person provided for by law. This definition of the concept of punishment in the law is given for the first time. His analysis allows to distinguish and consider the main features of punishment. An important task of the rule of law is the protection of basic social relations from criminal encroachments.

First of all, its implementation is expressed in determining what socially dangerous acts are criminal and which punishments are applied to those who committed them (Article 1 of the CCU). And the first important sign of punishment, which determines its social content, is the recognition of punishment by the measure of legitimate state coercion that applies to persons who have committed a criminal offense. Punishment forces a person into law-abiding behavior.

The second sign of punishment is enshrined in Art. 2 of the CCU, where it is stated that a person can not be subjected to criminal punishment until her guilt is proved legally and established by a court conviction. Hence, the use of punishment is one of the final stages of criminal responsibility. This is the logical legal consequence of a crime. The law provides for other methods of responding to crimes, such as: exemption from criminal liability on the basis of Articles 45, 46, 48 or with the transfer of a person to bail (Article 47); exemption from criminal liability and punishment with the use of juvenile coercive measures of an educational nature (Articles 97 and 105); exemption from punishment or from his residence on the basis of Articles 74, 75, 83, 84 is an exception and applies only in cases stipulated by law, are possible in the presence of sufficient reasons for this and, as a rule, for minor crimes. Therefore, the assessment of the punishment as the ultimate legal consequence of a crime is its characteristic feature.

The third distinguishing feature of punishment is also enshrined in Part 2 of Art. 2 of the CCU is that the punishment may be imposed only on the verdict of the court on behalf of the state, which gives it a public character. Exceptional jurisdiction of the court also includes release from punishment, except for dismissal as a result of amnesty or pardon. The court, having found guilty of a person in the commission of a crime and taking into account the specific circumstances of the case, concludes that it is expedient to apply a penalty to it, as well as determine its form, term or size. No other state body has such a right. Violation of this legal provision entails criminal liability.

The fourth sign of punishment found its legislative consolidation in Part 1 of Art. 50 CCU, where it is said that the punishment is the restriction of the rights and freedoms of the convicted person provided for by law. It is in this manifestation of such a property of punishment, as punishment, which makes it the most acute measure of state coercion. It is determined by the type and term of punishment, the presence of physical, property and moral deprivations and restrictions. In some punitive penalties expressed their property more, such as life imprisonment, imprisonment for a specified period, material or property deprivation, where it is expressed in the following sentence, a fine and confiscation of property; in others, there are prevailing restrictions on other rights, for example, the right to engage in professional activities, to obtain titles, etc. Every punishment also causes moral suffering of varying degrees - shame, disgrace to society and their loved ones. All these restrictions and determine the punishment as a sign of punishment. The amount of punishment is differentiated in each punishment depending on the nature and gravity of the crime. Penalty as a sign of punishment must always correspond to the severity of the crime.

The fifth characteristic feature of punishment is that it finds expression of condemnation, a negative assessment by the state as a crime committed, and the perpetrator himself. Thus, the punishment imposed serves a legal criterion, an indicator of the negative

assessment of the crime and the person who committed it, in terms of criminal law and morality.

The sixth sign of punishment manifests itself in his personal character. This means that the appointment of a criminal punishment and its execution are possible only in relation to the perpetrator. It can not be placed on other persons, even close relatives.

Finally, the seventh characteristic sign of punishment is that any punishment entails conviction (Article 88 of the CCU). It is the conviction that distinguishes criminal punishment from other means of state coercion. According to its content, the conviction is not only a property of punishment, it represents a certain legal status of a convicted person, connected with various kinds of rights restrictions and other adverse consequences, during a certain period specified in the law.

Judgment as an independent sign of punishment is determined by the fact that it is recognized as a circumstance that aggravates the punishment in the case of committing a new crime and retains certain restrictions on the rights of the convicted person and after his sentence is served. The above features distinguish punishment from other coercive measures.

According to the current criminal law, punishment is a measure of coercion, which is applied on behalf of the state by a court order to a person convicted of a crime, and consists in the restriction of the rights and freedoms of the convicted person provided for by law. The main features of punishment is that it acts as a measure of state coercion is the legal consequence of the crime of a public nature and by law is to limit freedoms and fell convicted and expressing a negative assessment of the state and society committed criminal acts. Punishment assigns only to a person convicted of committing a crime and convicts a person for a criminal conviction.

List of references:

1. Конституція України. Відомості Верховної Ради (ВВР), 1996, № 30, с. 141.

2. Постанова Пленуму Верховного Суду України від 22.12.1995, № 22 "Про практику призначення судами кримінального покарання".

3. Науково-практичний коментар Кримінального кодексу України / Д. С. Азаров, В. К. Грищук, А. В. Савченко [та ін.] ; За заг. ред. О. М. Джужі, А. В. Савченка, В. В. Чернея. 2-ге вид., перероб. і доп. Київ: Юрінком Інтер, 2018. 1104 с.

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THE CRITERIA OF CRIME DISJUNCTION THAT IS PROVIDED UNDER THE ARTICLE 391 OF THE CRIMINAL CODE OF UKRAINE FROM MALICIOUS VIOLATION OF ESTABLISHED PROCEDURE FOR SERVING A SENTENCE

According to the amendments to the Article 133 of the Criminal Executive Code of Ukraine dated on September 6, 2016 № 1487-VIII 2016 the notion “the malicious violator of the sentence serving security” was excluded and provided the following title “malicious violation of the established procedure for serving a sentence”. Regarding to the last version of the Article one should draw attention on the fact that the list of actions of the convicted who are recognized as “malicious” was reduced and is exhaustive.

It should be emphasized that the disjunction of such crime body as the malicious disobedience to the penal enforcement administration’s orders and the malicious violation of the established procedure for serving a sentence provided by the Article 133 Criminal Executive Code of Ukraine is an argumentative issue among the scientists. The scientists have not developed clear disjunction criteria for the crime provided by the Article 391 of the