



Criminal Legal Impact: Features, Forms, and Issues of Implementation

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Abstract

Introduction: the article reveals the essence of the criminal legal impact, analyzes its forms, and examines mechanisms for implementing certain forms of the criminal legal impact. Attention is focused on the specifics of regulating the mechanism to implement criminal law measures in the Penal Law Code of the Russian Federation. Problems of scientific and legislative definition of certain forms of the criminal legal impact, as well as criminal liability are touched upon. The author comes to the conclusion about the need to improve the legislative regulation of certain forms of the criminal legal impact and the mechanism for their realization, as well as the necessity to adjust forms of the criminal legal impact. *Purpose:* resolution of certain issues to regulate the mechanism for implementing various forms of the criminal legal impact. *Methods:* the author uses a general scientific dialectical method of cognition to consider the essence of phenomena, an analysis method to identify key problems arising in the legislative regulation of the criminal legal impact, a synthesis method to form the author's position on the identified problems and work out a mechanism for their possible solution. *Results:* modern forms of the criminal legal impact, enshrined in the criminal law, and approaches to understanding the criminal legal impact and its implementation raise questions due to the generally recognized point of view in the science of criminal law regarding the beginning and end of criminal liability and the approach to its understanding. Some forms of the criminal legal influence seem ineffective and require adjustments. The legislative regulation of the mechanism for implementing the criminal legal impact needs to be revised due to the inconsistency of its current state with the requirements for codifying norms of one branch of law. *Conclusions:* it seems necessary to correct forms of criminal legal influence defined in the criminal law, determining what should be attributed to such, guided by the goals and objectives pursued by it. In addition, it is advisable to revise the penal legislation system that does not meet codification requirements and does not fully reflect the specifics of penal law.

Key words: criminal legal impact, criminal liability, penal law, educational impact, judicial fine, punishment, post-penitentiary impact.

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Introduction

The criminal legal impact as a category of criminal law raises a number of issues related to the definition of its concept due to specific goals and relatively specific content; the identification of impact goals, different in each of its forms; the determination of impact forms and their attribution to a particular institution of criminal law; the mechanism to implement its various forms; and the identification of moments of its beginning and end. The central place in solving these issues is occupied by the establishment of types of punishment in the law, its imposition and execution.

Methods

To study identified problematic issues, we applied a general scientific dialectical method of cognition to consider the essence of phenomena. Using the method of analysis, the main problems of legislative regulation of the criminal legal impact were identified. The synthesis method made it possible to form the author's position on the identified problems and develop a mechanism for their possible solution.

Results

Some measures of the criminal legal impact today seem ineffective, and the mechanism for their implementation is not fully regulated, demonstrating organizational shortcoming. Thus, it is reasonable to review a number of provisions of the criminal and penal legislation.

Discussion

The criminal legal impact on a person is designed to ensure the established order in society. In order to avoid further violation of the rules worked out to maintain functioning of the state performing a life-supporting function, it is necessary to respond to the already committed crimes adequately. Thus, the purpose of the criminal legal impact is to prevent the commission of new crimes.

In order to clarify the essence of the criminal legal impact, it is appropriate to compare it with criminal liability, despite the essential difference between these phenomena. Approaches to understanding criminal liability are quite diverse. It is understood as an offender's obligation to undergo certain negative consequences, a law-abiding citizen's moral quality to comply with the prohibitions set by the state, and a certain sanction. How-

ever, based on the analysis of criminal law norms in their interrelation and inseparable unity, conducted by the author, the definition of criminal liability as a criminal's obligation to suffer punishment for what he/she has done to the state and society seems more correct from a normative point of view.

The criminal legal impact is a tool for implementing criminal liability, that is those measures the state uses to respond to the prohibition violation. Thus, criminal liability is the duty of a criminal, the criminal legal impact is the duty of the state. At the same time, both the first and the second legal phenomenon have one common characteristic, in our opinion.

In the doctrine of criminal law, there is an approach to classifying criminal liability, which allows dividing it into positive and negative [6, p. 37; 8, p. 266]. Positive liability implies responsibility of all persons to the state for compliance with the prohibitions established by criminal law. It is rather a preventive component of criminal liability. Negative criminal liability comes upon violation of the prohibition.

These provisions on criminal liability are also applicable to the criminal legal impact. So, the state prevents violations by establishing a prohibition under the threat of the criminal legal impact on a person, and in case of the crime committed it exerts the criminal legal impact in an accessible form provided for by law. There are various resources to be used for such an impact. Punishment is the most severe form of the criminal legal impact. The Criminal Code of the Russian Federation (hereinafter referred to as the CC RF) stipulates 13 types of punishment, arranged in a certain hierarchy, introduced into the criminal law in order to ensure an individual approach to each criminal and principles of justice and equality of all before the law. The legislator takes a very responsible approach to observing the principle of justice and tries to offer the law enforcement officer a wide range of opportunities to comply with this principle in the imposition and execution of punishment [15; 16; 18, p. 1482; 19, p. 63; 20]. According to Part 2 of Article 43 of the Criminal Code of the Russian Federation, the goals of punishment are restoration of social justice, correction of the convicted person and prevention of new

crime commission. Based on the sequence of these goals in the article, it can be assumed that social justice restoration is a priority, although the opinion about the equivalence of punishment goals prevails in society. The listed goals of punishment reflect the essence of the latter and do not coincide with goals of other types of the criminal legal impact. As M.V. Bavsun correctly notes: "The presence of common goals of criminal law counteraction to crime does not exclude the need to formulate independent goals for each group of impact measures, differing only in their intended result of implementation" [1, p. 14].

At the same time, if we compare goals of punishment with those of the criminal legal impact, we can come to the conclusion that one of them coincides, in particular prevention of crimes. This goal is also pursued in the implementation of other forms of the criminal legal impact, which, along with punishment, should include a suspended sentence, other measures of a criminal legal nature, placement of a minor in a special educational institution of a closed type, exemption from criminal liability and punishment. Yu. V. Truntsevskii backs this stance, indicating that the purpose of applying measures of criminal legal influence is to counteract crime through prevention, combating crimes, minimizing and (or) eliminating consequences of their commission [11, p. 30]. Prevention of crimes as the dominant goal of punishment is also indicated in the criminal law of Muslim states [14, p. 4]. Contrary to the prevailing view of the criminal legal impact, which does not cover issues of releasing a person from criminal liability and punishment, we still adhere to the position of including these measures of the state's response to new conditions in the resources of such impact. The question is to ensure criminal's proper behavior in any legal way. The principle of liability differentiation and punishment individualization presupposes the impact on criminals, based not only on legal facts, but also on their personality, their awareness of the illegality and public danger of their actions, and the desire to improve. In this regard, the criminal legal impact should provide for a kind of incentive and recovery measures. Exemption from criminal liability and punishment refers to incentive measures. Suspended sentence, compulsory measures

of educational influence, placement of a minor in a special educational institution of a closed type, and a court fine also fall into this category. We consider it necessary to single out these measures along with suspended sentence, since, although they relate to types of exemption from criminal liability, however, they are also other measures of a criminal nature, i.e. they have a dual legal nature. We cannot consider all other measures of a criminal-legal nature as incentives due to the inclusion of provisions on property confiscation (it is used as a penalty) and compulsory medical measures (here we should single out another category of the criminal legal impact – provision of assistance) in this section.

It seems reasonable to clarify, why placement of a minor in a special educational institution of a closed type is an independent form of the criminal legal impact. So, Part 2 of Article 90 of the CC RF does not have placement in a special institution among compulsory measures of educational influence, thus, based on the literal interpretation of the criminal law, it is not included in the system of measures under consideration. Moreover, Part 4 of Article 90 of the CC RF contains an indication to place a minor in a special institution in case of systematic violation of compulsory measures of educational influence appointed by the court. Part 2 of Article 92 of the CC RF states that placement in a special institution is used as a compulsory measure of educational influence. And again, based on the literal interpretation of the law, it can be concluded that such a measure is used as a measure of educational influence, while, in fact, it is not. Since Article 92 of the CC RF is devoted to the release of a minor from punishment, then it should be included in the group of types of release from punishment, without singling it out independently, but the literal interpretation of the law and the specifics of legal writing again does not allow us to do this. Thus, all types of exemption from punishment and from criminal liability, involving any active activity on the part of the released person or the state, are formulated using the preposition "With": "with the appointment of a judicial fine" (Article 76² of the CC RF), "with active repentance" (Article 75 of the CC RF), "with compensation for damage" (Article 761 of the CC RF), "with the use of coercive measures of

educational influence” (Part 1 of Article 92 of the CC RF).

Returning to the issue of goals of the criminal legal impact, it is necessary to refer to goals of its various forms presented in the table.

Goals of various forms of the criminal legal impact

Form of the criminal legal impact	Goals
Punishment	1) restoration of social justice; 2) correction of the convicted person; 3) prevention of crimes
Compulsory measures of educational influence; placement of a minor in a special educational institution of a closed type	1) restoration of social justice; 2) correction of the convicted person; 3) prevention of crimes
Compulsory medical measures	1) prevention of crimes and socially dangerous acts of insane persons prohibited by criminal law; 2) provision of assistance to a person suffering from a disease
Confiscation of property	1) restoration of social justice; 2) prevention of crimes
Exemption from criminal liability (including a court fine)	1) prevention of crimes; 2) correction of the convicted person
Exemption from punishment	1) prevention of crimes; 2) correction of the convicted person

So, each form of the criminal legal impact pursues, along with others, the goal of preventing crimes, including by responding to the crimes already committed. Consequently, the prevention of crimes is a common goal of the criminal legal impact. This also follows from the essence of the latter. This goal determines a number of tasks that the state faces within the framework of the criminal legal impact. They are formulated in Article 2 of the CC RF “Tasks of the Criminal Code of the Russian Federation”. It should be noted that the Criminal Code of the Russian Federation acts only as a documentary representation of the criminal legal impact. The code itself cannot pursue any tasks. Such an approach, in our opinion, is similar to the normativist theory of the crime object, indicating that the latter is a rule of law. But, as a number of authors rightly point out, the norm is only a text on paper and the fact of violation of the prohibition estab-

lished in the norm will not affect this text in any way, which cannot be said about public relations, within which this prohibition will be violated [7, p. 102; 9, p. 94; 10, p. 21].

In connection with the above, it seems necessary to raise the question of amending the title of Article 2 of the Criminal Code of the Russian Federation to “Tasks of the criminal legal influence”. If such amendments are made to the criminal law, there appears the logic, according to which the solution of all the tasks listed in Article 2 of the Criminal Code of the Russian Federation must be achieved during the criminal legal impact regulated by the Criminal Code of the Russian Federation.

Developing this idea, it is necessary to consolidate the concept of the criminal legal impact itself, as well as its types. So, for example, Article 1 of the Criminal Code of the Russian Federation could be supplemented by Part 3, establishing that the criminal legislation regulation subject is public relations that develop in connection with the commission of a crime, as well as within the framework of the criminal legal impact, which is the application of measures defined by the criminal law to a criminal in order to prevent violations of criminal law prohibitions and maintain law and order.

Article 1 of the CC RF should also be supplemented with Part 4, defining forms of the criminal legal impact: punishment carried out with the help of correctional influence means (regime, labor, training, educational work); suspended sentence with subsequent control; compulsory medical measures; confiscation of property; exemption from criminal liability, including with subsequent application of certain measures (court fine); exemption from punishment with subsequent control or application of coercive measures of educational influence; criminal record.

The goals of various forms of the criminal legal impact presented in the table may raise questions, and therefore we consider it necessary to comment on some of them.

As can be seen, compulsory measures of educational influence and placement of a minor in a special institution pursue the same goals as punishment. This provision only emphasizes the legislator’s stance that a minor who is aware of the public danger of his/her act and whose behavior shows a tendency

to correction can be released from liability in connection with application of these measures or from punishment in connection with placement in a special institution. We are not talking about the fact of correction, but only about the tendency to such. Therefore, highlighting the purpose of correction in this case seems appropriate and necessary. Restoration of social justice should also be attributed to the goals of compulsory measures of educational influence and placement in a special institution for the reason that a minor still undergoes negative consequences of his/her illegal act, although he/she is released from criminal liability, so the balance of public relations is restored.

Compulsory medical measures, along with the provision of assistance to a person suffering from a disease, are aimed at preventing crimes. Perhaps, in this case, the use of the word "crime" is not entirely correct, since commission of an illegal act in a state of insanity excludes criminal's recognition of a crime. At the same time, the category of measures under consideration can also be applied to persons who have violated the law in a sane or limited sane state. Therefore, this goal can be formulated in this way, or the wording can also be expanded: "prevention of crimes and socially dangerous acts committed by insane persons or prohibited by criminal law".

The purposes of confiscation of property that we have identified as another measure of a criminal nature also need clarification. We believe that in this case we should proceed from the category of confiscated property. Depending on this category, one of the goals will be missing, or both will be pursued. The goal of restoring social justice is to compensate the victim for damage at the expense of confiscated property. The purpose of crime prevention is realized through the possible removal from the criminal the tool of the crime or the means of its commission, which to some extent acts as a preventive measure.

Exemption from criminal liability as a form of criminal legal influence pursues two goals. The first one, prevention of crimes, is implemented through the state's credit of trust to the person who has committed the crime. The state, showing favor to the citizen, counts on his/her law-abiding behavior in the future. A citizen who has been trusted will not com-

mit a crime in the future, feeling his/her responsibility to the state. As for correction, a person is aware of the prohibition to commit crimes in the future due to the trust placed in him. According to the articles on exemption from criminal liability, public danger does not vanish due person's awareness of the illegality of his/her actions and his/her conviction of the inadmissibility of committing crimes in the future. Such a formulation is present only in Article 75 ("as a result of active repentance, it has ceased to be socially dangerous"). It allows us to conclude that it is possible to release from criminal liability a person who has not fully achieved correction. The statement that the person who compensated the damage or reconciled with the victim through the expression of an apology has ceased to be socially dangerous seems untenable, since it does not take into account the subjective component. Exemption from criminal liability in connection with the imposition of a court fine is of particular concern in this regard, as it does not imply correction as such, but only the possibility of paying the specified fine. In addition, the fact of possible exemption of an incorrigible person from criminal liability is confirmed by Article 90 of the Criminal Code of the Russian Federation on compulsory measures of educational influence, considered as a type of exemption of minors from criminal liability. The application of such measures to minors released from liability proves the uncertainty of both the legislator and the law enforcement officer in their correction. The approach we have reflected to defining goals of exemption from criminal liability as a form of the criminal legal impact may be criticized regarding the statement about the need to correct the person being released. It may be objected that it is inappropriate even to raise the issue of exemption from criminal liability of persons who need correction. At the same time, the above considerations on the person's fulfillment of objective conditions necessary for exemption from liability, in the absence of real awareness, acceptance of his/her guilt and correction, substantiate of the author's point of view.

Correction of a convicted person as the goal of release from punishment is reflected in the provision of the opportunity for the convicted person to draw appropriate conclu-

sions about his/her behavior without the use of a punitive element. This statement applies both to persons who could not be released from criminal liability on formal grounds, and persons who initially needed to serve a real sentence, but enduring the punishment demonstrated a desire to improve. Correction of a convict cannot be considered as a goal inherent in all types of release from punishment. Thus, release due to an illness, with a change in the situation, with the expiration of the statute of limitations, and postponement are an objectively conditioned necessity, are the duty of the state. Conditional early release and replacement of the unserved part of the sentence with a milder type are of a different nature, which allows us to talk about the purpose of correcting a convict.

Prevention of crimes with regard to release from punishment is achieved, since a convict is not affected by the criminal environment in a correctional institution, does not experience risks of desocialization (if it is a question of deprivation of liberty), and does not undergo various restrictions hindering realization of person's creative and professional capacities (regarding types of punishment not related to isolation from society).

Thus, the goals listed in the table, in our opinion, fully correlate with the forms of the criminal legal impact.

The question of the moment of the beginning and end of the criminal legal impact is of interest in some cases. How do the criminal legal impact and criminal liability relate in this case? In this regard, it is interesting to discuss such forms of criminal legal influence as compulsory measures of educational influence and exemption from criminal liability. There are different views on the moment criminal liability arises. For instance, for supporters of the existence of positive criminal liability it is the moment when the criminal law enters into force [3; 6; 8; 13]. Other authors adhere to the position that criminal liability arises at the time a crime is committed, when a person becomes obliged to face consequences of his/her actions [4; 5]. The dominant opinion today is that criminal liability arises from the moment of being charged. [9, 19]. This stance is based on legal facts and the need to confirm the basis of criminal liability. Proceeding from the essence of criminal liability, one can

disagree with this position, since a certain kind of obligation arose precisely about and at the time of crime commission, or law violation. However, a person who has committed a crime can be released from criminal liability, which means that in the modern theory of criminal law the moment, when criminal liability arises and is terminated, is actually determined by the law enforcement officer.

The moment of criminal liability termination also attracts attention. Criminal liability, according to the law, does not end at the time a person has served a sentence. It extends further – for the period when a person has a criminal record. Considering that, upon meeting a number of conditions, a convict has the right for early release and removal of the criminal record, it is necessary to emphasize the powers of the law enforcement officer to establish the moment of criminal liability termination.

The moment of the criminal legal impact emergence is characterized by a later stage in the development of criminal legal relations than the time of criminal liability occurrence. As a rule, this is the moment of criminal sentencing, use of coercive measures of a medical nature or educational influence, confiscation of property, or imposition of a court fine. Besides, an investigator, inquirer or prosecutor may pass a resolution on exemption from criminal liability on the grounds provided for by the criminal law and not requiring a court decision. At the same time, in this case, in fact, the criminal legal impact begins earlier with compensation for damage and other reparation. However, it is impossible to unambiguously call such person's actions as the criminal legal impact, since, as a rule, a person should carry out these actions voluntarily, thus confessing guilt and confirming repentance and correction.

A criminal record should be recognized as one of the forms of the criminal legal impact. Therefore, the moment of impact termination, provided that the sentence is actually served, should be called the moment of record expungement.

Compulsory measures of educational influence deserve special attention in the aspect of discussing the time of the criminal legal impact termination. The legislator considers these measures as an exemption from

criminal liability. At the same time, if a person is released from criminal liability, the state recognizes that such a person does not need further influence and any measures regarding the crime committed will no longer be applied to him/her. So, release from liability with the subsequent criminal legal impact looks rather strange. The same can be said about a court fine. In this regard, it seems unjustified to exclude compulsory measures of educational influence from the number of forms to implement criminal liability. It seems that such a measure of the state's response to the crime committed by a minor should be considered as an exemption from punishment, but not from criminal liability. At the same time, placement in a special institution fits into the algorithm we proposed, in contrast to actual compulsory measures of educational influence. This approach may also be argued by the fact that compulsory measures of educational influence are placed in the section "Other measures of a criminal-legal nature", which title stipulates that the corresponding measures are part of the criminal-legal impact.

A court fine involves rendering of a judicial decision on exemption from criminal liability with subsequent payment of a fine, i.e. it actually transfers the criminal legal impact to a later stage, where it is not presupposed. Moreover, it is assumed that in case of non-payment of a court fine, the decision on exemption from criminal liability is subject to cancellation, and the person is liable to prosecution, conviction and punishment. Considering that initially exemption from criminal liability was envisaged as an irreversible incentive measure, the provisions on a judicial fine do not comply with provisions of the criminal law doctrine and legal writing rules.

The concept of the criminal legal impact in terms of the letter of the criminal law is broader than the one of criminal liability, since it can be implemented outside the latter. We believe that the criminal-legal impact in the form of other measures of a criminal-legal nature should be considered, first of all, as a preventive measure, and not a responsibility measure. Prevention also applies to all citizens, including law-abiding ones.

So, let us turn to the analysis of the mechanism to implement measures of the criminal legal impact provided for by the law. A num-

ber of normative legal acts of various levels are devoted to this issue, united within the framework of the penal law branch, however, going beyond the limits of the Penal Code of the Russian Federation. The disparity of provisions on the mechanism to implement certain types of the criminal legal impact does not always have a positive effect on the practice of applying these norms, moreover, the Penal Code of the Russian Federation loses its meaning as a code due to the fact that it regulates only one direction of a large branch. The analysis of the Penal Code of the Russian Federation shows that its norms are devoted only to the execution of punishment and the application of certain measures of the post-penitentiary impact, which are not included in the system of the criminal legal impact. The criterion for compilation of the Penal Code of the Russian Federation is not entirely clear to us. To clarify it, let us take a step back:

1) the Penal Code of the Russian Federation unites norms on the execution of various types of punishments. The position is incorrect, since the Code has provisions on post-penitentiary measures of influence in;

2) it reflects norms related to the jurisdiction of the Federal Penitentiary Service. The position is close to reality, however, the penalty in the form of a fine executed by the Federal Bailiff Service falls out of this scheme;

3) a "mixed" criterion combining the first two features. The most objective criterion, however, is partly refuted by the fact that the Penal Code of the Russian Federation stipulates norms regulating the procedure for applying compulsory medical measures to convicts. Thus, the Penal Code of the Russian Federation is partly devoted to the implementation of other criminal legal measures.

In terms of codifying norms of a particular branch of law, such a provision seems unacceptable. We agree that all the nuances of the criminal legal impact cannot be combined in the code due to their multiplicity and their attribution to the jurisdiction of various law enforcement subjects issued by various bodies. At the same time, the Penal Code could have reflected generalized provisions in the form of norms of a blank nature, but concerning all forms of the criminal legal impact. This is also required by the attitude adopted in the scientific field to penal law as a "living" criminal law.

In our opinion, the specifics of applying post-penitentiary impact measures could be reflected in special regulatory legal acts.

The disunity of criminal and penal law norms in terms of compliance with the hierarchy in the punishment system raises questions. So, in the Penal Code of the Russian Federation, this hierarchy is not maintained (norms on the execution of punishment in the form of mandatory work precede norms on the execution of punishment in the form of a fine).

We argue that, when designing the Penal Code, one should not focus on duties of a particular body or institution, but on criminal law provisions, thus revealing the procedure for their implementation.

When analyzing norms of the Penal Code of the Russian Federation, it can be seen that in fact the criminal legal impact is not limited to those formally defined actions that are regulated by criminal law. In addition to these actions, it stipulates educational work, social impact, labor and training.

International criminal law, like the national one, provides for the use of other measures of the criminal legal impact along with punishment, but does not specify them. Such an approach to the regulation of criminal law relations raises certain doubts about the limits within which international legislation can operate. We agree with S.A. Korneeva that "international judicial bodies' competence should be limited to the recognition of a person guilty of committing a crime against the world and security of the mankind, followed by the appointment of criminal punishment and, possibly, control over its execution. Determining types of other measures of the criminal legal impact should be recognized as the subject of exclusive competence of the national justice authorities in order to prevent violations of state sovereignty and interference in internal affairs of the country concerned" [17].

The domestic legislation requires detailed regulation of the criminal legal impact forms for the law enforcement officer not to go beyond the limits.

Conclusion

Certain systematization of the criminal legal impact forms in the criminal law is necessary. First of all, the law should define that the criminal legal impact is the application of measures defined by the criminal law to a person who has committed a crime in order to prevent violations of criminal law prohibitions and maintain law and order. The criminal legal impact forms should also be determined as follows:

- 1) punishment carried out with the help of correctional influence means (regime, labor, training, educational work);
- 2) probation with subsequent control;
- 3) compulsory medical measures;
- 4) confiscation of property;
- 5) exemption from criminal liability, including subject to the subsequent application of certain measures (a court fine);
- 6) release from punishment with subsequent control or application of coercive measures of educational influence;
- 7) criminal record.

It is noteworthy that the proposed list lacks placement of a minor in a special educational institution of a closed type due to its inclusion in the composition of compulsory measures of educational influence.

The proposed changes require further elaboration and substantiation, as well revision of other provisions of the General Part of the Criminal Code of the Russian Federation.

The conducted research is of interest from a theoretical and practical point of view, as the author tried to systematize the scattered knowledge about the criminal legal impact and work out approximate measures to improve this area of state activity.

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