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Optimal Sanction of the Criminal Law Norm: Stating the Problem

VIKTORIYA V. ALEKSANDROVA
Lomonosov Moscow State University, Moscow, Russia, domna80@mail.ru, https://orcid.org/0000-0002-3611-3301

Abstract

Introduction: the article is devoted to the problem of designing a sanction of the criminal law norm. The author shows imperfection of the current system of sanctions and proposes a concept of optimal sanctions, combining requirements of criminological validity, fairness, effectiveness and consistency. *Purpose*: to optimize scientific ideas about the criteria for designing a sanction to find an optimal sanction. *Methods*: historical, empirical, interpretation; theoretical methods of formal and dialectical logic; private scientific methods, such as legal-dogmatic and interpretation of legal norms. *Results*: the author comes to the conclusion about the content and criteria of the requirements of criminological validity, fairness, effectiveness and consistency. Their interdependence is shown. At the same time, criminological validity is understood as the sanction focus on preventing and reducing crime as a phenomenon; the sanction fairness requirement presupposes that it corresponds to the public danger of the crime. The sanction effectiveness requirement means a sufficient degree of conformity of the result obtained and the goals set before the sanction. General prevention of crime commission, as well as contribution to punishment goals achievement are considered as goals. The sanction consistency requirement means the need for consistency of sanctions with each other, both within the framework of one article and in general within the boundaries of the Special Part of the Criminal Code of the Russian Federation.

Keywords: sanction of the criminal law norm; optimal sanction; designing a criminal law sanction; mechanism to design a sanction; criminological validity of a sanction; fairness of the criminal law sanction; sanction effectiveness; sanction consistency requirement.

5.1.4. Criminal law sciences.

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Introduction

Nowadays, criminal law science seeks to solve one of the generally recognized problems of designing a sanction of a criminal law norm. Researchers unanimously assert that neither theory nor practice has a clear scientifically based system for designing criminal sanctions, and the approaches to their design are the result of author's ideas [10, p. 138]. E.F. Pobegailo's statement has become a common expression that the problem of designing sanctions is the Achilles' Heel of the Criminal Code of the Russian Federation [36, p. 61].

Indeed, there is an urgent need to develop a single universal mechanism for building

sanctions – the choice of types and sizes of criminal penalties for each crime. The existence of such a mechanism would allow both to define new sanctions and to bring to uniformity the already working system, which shortcomings are disclosed in works of many specialists. Currently, according to A.I. Korobeev, the legislator establishes sanctions "on the basis of already existing sanctions on other compositions and subjective opinions of the participants in the development of proposals" [39, p. 123]. We could not find justifications for the proposed sanctions in explanatory notes to the recent draft laws amending the current criminal legislation. If in the explanatory note to the draft law No. 464757-7 there is at least a mention that the newly introduced crime should be classified as moderate [15], then in the explanatory note to the draft law No. 536-8, despite the detailed argumentation about the need to introduce Part 2 of Article 116.1 of the Criminal Code, nothing is said about why the legislator proposes particularly this set of criminal penalties [16].

Data on actual punishability of crimes reveal imperfection of the current system of sanctions. Corresponding studies of crimes against the management order were conducted by P.A. Filippov [52, 53]. In particular, it was found that the courts use the stipulated amounts of penalties by no more than half. According to the author, the judicial system's assessment of crimes, including the degree of public danger and compliance with the prescribed amount of punishment, does not coincide with the established criminal law [53, p. 228].

Despite the fact that all scientists agree with the existence of the very problem of building sanctions, this is where the unity of opinions ends. Different authors focus on various requirements for criminal sanctions, and these requirements overlap only partially. The purpose of this study is to optimize scientific ideas regarding the criteria for designing a sanction in order to find an "optimal" sanction. At the same time, the term "optimal" (from Lat. optimus" – the best) is understood as the "most appropriate to certain conditions and tasks" [33]. Therefore, we will consider an optimal sanction as the one that provides a necessary balance between various key requirements for its design. An optimal sanction should combine requirements of criminological validity, fairness, effectiveness and consistency.

Criminological validity of a sanction.

A fairly large group of authors draws attention to the need for criminological validity of sanctions of criminal law norms (in the legal literature, the terms "criminological validity" and "criminological conditionality" are often used as synonyms) of sanctions of criminal law norms. M.T. Valeev writes that one of the important tasks of criminology is to provide the legislator with a certain "algorithm for selecting" punishments to include in the sanction, since a "criminologically valid sanction leads to unjustified public expectations, impossibility of achieving punishment goals, distortions in criminal policy, disproportionality of punishment in sanctions for homogeneous (similar) crimes, non-applicability and inapplicability of the established penalty, and ineffectiveness of punishment, decrease in respect for the law, and recurrence of crimes" [6, p. 5].

The problem of criminological validity of sanctions in criminal law is part of a more general problem of criminological validity of the criminal legislation, originated in the second half of the 19th – early 20th century. In Soviet times, the works of A.A. Herzenzon [9], E.F. Pobegailo [37; 38], V.D. Filimonov [51], L.I. Spiridonov [43], S.F. Milyukov [29] and others were widely known. According to D.V. Shebanov, the state of security of an individual, society and the state should be the main criterion for criminological validity of criminal law and practice of its application [55, p. 8].

The semantic analysis of the term "valid" is quite fully presented in the work of S.S. Boskholov and B.B. Badmaev [3], as a result of which it can be concluded that valid means reasoned, feasible, proven, and motivated. Criminologically valid means, respectively, reasoned and justified from the point of view of criminology. In this aspect, a criminologically valid sanction of the criminal law norm is a sanction, the set of penalties in which is justified in terms of criminology.

Supporting this idea, M.T. Valeev emphasizes that the philosophical definition of vali-

dation implies a "way of rational argumentation". At the same time, M.T. Valeev divides lawmaking into primary and secondary. In primary lawmaking, a criminologically valid sanction takes into account the danger of the act claiming to be among criminal, the identity of an alleged offender, and determinants of the crime, as well as contributes to crime prevention. In secondary lawmaking, entailing the change in the already existing sanction of the criminal law norm, one can mention the frequency of real penalty application and recidivism rates after the imposition of a penalty from the previously fixed sanction [6, pp. 7–10]. We partially agree with M.T. Valeev's opinion. To begin with, it seems inappropriate to differentiate criminological validity criteria for primary and secondary lawmaking. The criteria should be the same regardless of whether the sanction is re-introduced, or modified or amended. Besides, dwelling on criminological validity criteria for secondary lawmaking, the author rather implies sanction effectiveness criteria.

A criminologically valid sanction is the one that takes into account not only the public danger of crime, but also crime rates in general. This is important, as understanding crime as the totality of all crimes committed over a certain period of time in a certain territory, we predict the impact of a new sanction not only on crimes of a specific type, but also other crimes in the crime system. Thus, one can provide a notorious example of the unjustified introduction of the death penalty for rape in Soviet times by the Law of the RSFSR of July 25, 1962 "On amendments and additions to the Criminal Code of the RSFSR". As a result, criminals began to kill victims, since the death penalty was imposed both for rape with murder and for rape without murder, and the probability of identifying the culprit in the murder of the victim was significantly reduced [20; 22, p. 641; 35]. Of course, the problem of forecasting corruption risks seems to be important in this aspect. Thus, sanctions containing unreasonably wide ranges of imprisonment terms and a large number of alternative punishments are considered by many experts as corrupt [24, pp. 292–293].

A significant component of criminological validity is the data on the criminal's personality, which should be considered when designing a sanction. So, according to N.F. Kuznetsova, in crimes whose public danger of personality allows for variability, sanctions should be formulated alternatively with a wide range in the size of punishments. For example, excluding the norm on a particularly dangerous recidivist from the Criminal Code of the Russian Federation, and, accordingly, signs of a recidivist from sanctions of the current Criminal Code of the Russian Federation is not criminologically valid [39, p. 742].

Thus, the requirement of criminological validity is quite voluminous. In the most general formulation, we would agree with N.F. Kuznetsova that law that is criminologically valid is the one "aimed at reducing crime based on its level, dynamics, structure and forecast" [23, p.74]. Therefore, the sanction, which is criminologically valid, entails, in particular, a public danger of the act, public danger of the alleged offender's identity, data on the crime in general, determinants of the crime, and is aimed at preventing and reducing crime. According to A.I. Dolgovaya, penalization-related issues should be the subject of criminological expertise, understood as criminologists' assessment of the document compliance (for example, draft legal acts) with scientifically sound requirements for combating crime, possibilities of its adoption, amendment or implementation in terms of possible impact on crime, its determining circumstances, and the state of the fight with crime [40].

Fairness of sanctions

An equally large group of authors discusses fairness of sanctions, presupposing that punishment corresponds to the public danger of the crime. It is unanimously stated that a sanction must correspond to the nature and degree of public danger of the crime. Indeed, when penalizing, it is important not only to declare some act socially dangerous, but also to design an appropriate fair set of punishments for this act. However, to assess what kind of punishment is adequate to the public danger of a particular crime is rather difficult. To date, there is no algorithm to determine a set of punishments (by type and size) corresponding to a specific combination of the nature and degree of public danger of the

crime. Moreover, in science, "cost" indicators of the public danger of crimes themselves are not fixed yet [39, p.131], i.e. it is unclear how to unambiguously determine the quality and quantity of public danger of the crime. It is worth mentioning that when designing a sanction, it is necessary to consider types and sizes of punishments included in it, an optimal number of punishments in the alternative sanction, presence or absence of additional punishments, and a range of lower and higher limits of punishments. Thus, clear algorithms, linking alternativeness of sanctions with the public danger of the crime, should be established. Many experts argue that the higher the public danger of an act, the less alternative the sanction, and, conversely, the lower the public danger of the act, the more variable the sanction [41]. However, this general rule also needs clarification and further development.

Undoubtedly, the history of criminal law research knows many attempts to solve the problem of determining the nature and degree of public danger. It is known that the nature of public danger refers to its qualitative characteristics, and the degree – to the quantitative. The first is determined by a combination of signs of the encroachment object, socially dangerous consequences (physical, economic, organizational, etc.), the form of guilt (intentional or careless) and the method of committing a crime (violent, deceptive, group, etc.); the second depends on the amount of damage caused, the degree of guilt severity (premeditation, sudden intent, negligence), the danger of a specific encroachment method (violence dangerous to life and health, violence not dangerous to life and health) [13, 47].

However, a slightly different approach has been formulated in judicial practice. So, Paragraph 1 of the Resolution of the Plenum of the Supreme Court of the Russian Federation No. 58 of December 22, 2015 "On the practice of assigning criminal punishment by the courts of the Russian Federation" stipulates that the nature of public danger is determined, first of all, by the focus of the act on the object protected by criminal law, while the degree of public danger – the nature and size of crime consequences, method of committing the crime, defendant's role in the crime committed in complicity, type of intent (direct or indirect) or negligence (thoughtlessness or negligence), and circumstances mitigating or aggravating the punishment. This approach, demonstrating the dependence of the nature of public danger exclusively (or predominantly) on the object of criminal law protection, is shared by many researchers [7, pp. 89–90; 45, p.18]. There are attempts to establish correlation between the social danger of the crime and the punitive content of punishment. E.V. Gustova suggests focusing on the object of encroachment and the severity of consequences that have occurred – the more significant the social relations and the heavier the consequences, the more severe the sanctions [10, p. 25; 11, pp. 207–208].

Indeed, crime object elements and its consequences are key elements to determine the public danger of the crime. When working out the Special Part of the Criminal Code of the Russian Federation, the legislator relies on a hierarchical value of objects. However, it should be borne in mind that the nature of public danger as a qualitative characteristic of the crime determines its essence, distinctive features, and specifics. Meanwhile, the degree of public danger determines the amount of danger contained in the act. Therefore, it should be recognized that other elements of the corpus delicti (except for the object and consequences) also affect the nature of public danger. For instance, while the size of a stolen object determines the degree of public danger of the act, the method of encroachment, such as secret, open, violent, deceptive, – both the degree of public danger and its nature. The use of a helpless state, as well as violent methods as part of rape, determines the essence, qualitative side of the public danger, representing important encroachment features. M.A. Atal'yants comes to the conclusion that the method of committing a crime is included in the article disposition in the case when it has a significant impact on the nature and degree of public danger of the crime: the "method by its properties ensures qualitative originality of the execution of a criminal act that causes or can cause the greatest, significant harm to public relations" [1, p.126]. Similar arguments can be

given for other elements of the corpus delicti. We cannot but agree with N.F. Kuznetsova that "crimes encroaching on the same object may differ in nature due to the difference in the form of guilt" [21, p. 437]. The researcher argues that the "qualitative characteristic of each crime comprises the content of mandatory elements of the composition of the corresponding crime" [21, p. 437].

However, if the nature of public danger is understood as a combination of a number of objective and subjective elements of the corpus delicti, then it becomes even more difficult to work out an algorithm linking the nature of public danger and punishment types. In other words, in order to substantiate the connection of restrictions that make up the content of punishment with the nature of public danger of the crime, in addition to encroachment object values, it is important to set scales of methods, motives, goals, as well as evaluate their various combinations, and study this set of features for further uniform assessment. This may be the reason of V.N. Kudryavtsev's conclusion that "there is no direct correlation between types of punishment and the nature of the crime" [6, p. 7].

Effectiveness of sanctions

Another important requirement to a sanction of the criminal law norm is its effectiveness. This issue is, in turn, part of a more general problem of the legal regulation effectiveness. According to A.S. Pashkov and D.M. Chechot, "effectiveness of legal regulation is its efficiency, i.e. the ability to influence public relations in a certain direction useful for society" [34, p. 3]. M.D. Shargorodskii writes that effectiveness is an abstract concept meaning only the ability of the applied means to contribute to achievement of the desired goal, and the effectiveness of a legal norm is determined by how much its application contributes to achievement of the goals set for legal regulation of relevant public relations [54, pp. 287–288]. According to S.Yu. Bytko, the essence of effectiveness of criminal punishment is expressed in the ability to achieve its goals [4, p. 24]. In the middle of the last century G.A. Zlobin was the first to suggest determining effectiveness of punishments through realization of their goals [49, p. 583]. Researchers back this understanding of the effectiveness of criminal law punishment to one degree or another, although in modern research the effectiveness of punishment is increasingly understood not as an actual result, but as a measured degree of conformity of received and expected results.

It is also worth paying attention to the fact that sanction and punishment, although interrelated concepts, are still not identical. The sanction is a part of the criminal law norm, defines the model of criminal punishment provided for a specific crime [10, p. 26]. How are the effectiveness of punishment and the effectiveness of sanctions related? First, the effectiveness of punishment is understood by researchers in three different aspects – effectiveness of sanctions, effectiveness of sentencing, and effectiveness of punishment execution. For example, V.A. Utkin writes that the "effectiveness of punishment as a whole consists of effectiveness of the law and effectiveness of the law enforcement practice" [50, p. 127]. Therefore, when assessing the effectiveness of a sanction, we assume that the work of law enforcement agencies remains at an unchanged (constant) high-quality level and abstract from activities of the judicial and penal systems, unlike when evaluating the effectiveness of punishment. Second, we believe that the sanction is designed to ensure punishment goals achievement, however, due to its specifics, it also has its own goals. The idea of distinguishing the purpose of punishment and the purpose of sanction is shared by D.A. Garbatovich [8, p. 35]. According to O.E. Leist, the crucial task of sanctions is to prevent offenses; in case the offense is committed, the application of sanctions is aimed at implementing tasks of general and private prevention, correcting the offender, restoring law and order in all possible cases [25, p. 7]. Other authors also agree with general preventive effect of sanctions [19, p. 26]. Thus, it can be concluded that the effectiveness of the sanction is determined by gaining the purpose of general prevention of crimes, as well as by contributing to the achievement of goals of criminal punishment. At the same time, the difference between general prevention as the sanction purpose and general prevention as the punishment purpose is that the first is realized by the fact of the existence of

a sanction with a certain set of punishments, and the second is the fact of punishment execution.

A great number of works are devoted to the study of the problem of achieving punishment goals as one of the most difficult problems to determine the effectiveness of sanctions. The goal of punishment is usually understood as a "final, conceivably anticipated result that the state seeks to get by using punishment" [46, p. 340]. According to M.D. Shargorodskii, all punishment goals, except for crime commission prevention, are either achieved by the very fact of punishment application (restoration of justice), or in general their effectiveness cannot be measured by any specific criteria (correction) [54, p. 291]. We will consider issues of achieving goals in the aspect of evaluating sanctions effectiveness.

1. General prevention as a goal of sanction and punishment. According to E.V. Fomenko, the start of the mechanism for achieving general prevention is rather debatable [49, p. 606]. We back the stance that general prevention as a purpose of punishment is by punishing the convicted person to prevent the commission of crimes by others [30, p. 347; 48, p. 272]. This understanding has historical roots, for example, Article 6 of Chapter 22 of the 1649 Cathedral Code fixes the "death penalty without any mercy, so that looking at it, others would not do such a lawless and bad deed" [39, p. 745]. However, if we are talking about general prevention, as a purpose of the criminal law norm sanction, then the considered mechanism begins to operate from the moment the corresponding criminal law norm acquires legal force. The threat of punishment contained in the sanction affects consciousness of citizens (unstable persons), forcing them to refrain from committing a crime.

There arises a natural question about the criterion showing general prevention effectiveness? The use of crime dynamics proposed by M.D. Shargorodskii is the most acceptable one [54, p. 291]. This criterion in one form or another is supported by modern authors. So, S.Yu. Bytko agrees with it in general, however, rightly draws attention to the fact that crime is influenced by many factors, and therefore it is necessary to make sure that the increase (decrease) in the total number of crimes is associated with the ineffectiveness (or vice versa, effectiveness) of criminal punishment, and not determined by other circumstances. As a solution to this problem, the author suggests comparing the crime rate in different social groups, which, in his opinion, should exclude the effect of other social determinants, since they usually do not affect all groups simultaneously [5].

Crime is a complex socio-legal phenomenon that depends on a number of objective and subjective factors. In particular, changes in legislation, economic processes, political situation, epidemiological situation, migration processes, crime prevention measures, etc. can affect the state of crime. Nowadays, criminology has neither an exact list of factors determining crime, nor results of assessing the nature and degree of their independent impact on crime rates. Hence, with regard to the above-mentioned reasons, we can agree with the proposed criterion only in the most general sense.

2. Special prevention as a punishment goal. The purpose of special prevention is usually considered in its relationship with the purpose of correction. Some authors consider these goals as identical, since both goals strive to ensure that the convicted person does not commit crimes in the future. Other authors, recognizing their interrelation, see the difference in the fact that correction is rather a moral category, meaning re-education of the convicted person and changes in his/her personality; special prevention presupposes that a person does not commit new crimes (regardless of his/her moral values and beliefs) [49, pp. 612–621]. We will assume that special prevention means that a person does not commit a new crime in the future, regardless of the reasons – his/her correction, fear of punishment, inability to commit a new crime (in particular, due to his/her isolation), etc. When evaluating the effectiveness of special prevention, the question arises about the period of time during which a person should refrain from committing a new crime. Is it possible to talk about the failure to achieve the special prevention goal if a person commits a new crime while serving a sentence, immediately after serving a sentence, after removal or repayment of a crimi-

nal record, 50 years after serving a sentence? As E.V. Zhidkov rightly notes, over time, after serving the sentence, the convicted person is subject to various factors, and the influence of special prevention weakens [14, p.51]. Some scientists propose to limit such terms to the full expiration of a criminal record, i.e. special prevention should be considered successful if a convicted person has not committed a new crime during the sentence execution and before the repayment or removal of a criminal record [26, p. 64; 44, p. 104]. An argument in favor of the above position, in addition to weakening of the special prevention influence over time, can be the rule that the repayment or removal of a criminal record cancels all legal consequences associated with it. Therefore, when committing a new crime after the repayment or removal of a criminal record, a person will be considered to have committed a crime for the first time.

M.D. Shargorodskii considers the dynamics of recidivism as the criterion to evaluate special prevention effectiveness. However, as S.Y. Bytko correctly notes, "choosing recidivism dynamics as the criterion to assess special prevention effectiveness excludes from the field of view of researchers a huge layer of negligent crimes, the repetition of which does not form this type of multiplicity, the combination in different sequences of intentional and negligent crimes, as well as intentional crimes, convictions for which in accordance with paragraph "b" of Part 4 of Article 18 of the Criminal Code of the Russian Federation are not taken into account in case of recidivism of crimes" [5]. Thus, it makes sense to consider not recidivism dynamics, but rates of growth or decrease (dynamics) in the number of crimes committed by persons previously convicted of crimes as the special prevention effectiveness criterion. Data on such persons are reflected in the official statistics of the Main Informational and Analytical Center of the Ministry of Internal Affairs of the Russian Federation, where the person previously convicted of the crime is understood to be a person who was convicted in accordance with the procedure established by law, and at the time of the new crime commission the criminal record has not been removed or repaid. Nevertheless, the choice of such a criterion does not exclude other significant shortcomings in the assessment, caused by a high latency level of certain types of crimes, criminality of places of deprivation of liberty, close attention of law enforcement agencies to previously convicted persons, etc. [5].

3. Correction of the convicted person as a punishment goal. As it was shown earlier, the purpose of convicts' correction is understood ambiguously in the literature. There is a position on the unconditional support of legislator, who included correction in the goals of criminal punishment and the goals of penal legislation [42]. Representatives of a different position do not find it appropriate to preserve this goal in the norms of criminal and penal legislation [12]. The authors' views supporting this goal range from understanding correction as re-education of the convicted person to identifying it with special prevention. If we understand correction of a convicted person as non-commission of new crimes, then the dynamics in the number of persons previously convicted of this crime will also serve as an effectiveness criterion. In other cases, it is necessary to agree with the majority of specialists who write about the inability to assess a degree of correction of the convicted person. So, A.A. Herzenzon wonders, "Where are legislative and practical criteria when we can say, "yes, a person who is characterized by such and such features can be considered corrected, but a person who does not have these features cannot be considered as such". I shall take the liberty to assert that there are no such clear criteria in the science of correctional labor law or in practice" [28, pp. 87–88]. I.S. Noah also argues that "science cannot recommend any formal criterion, the presence of which in each particular case could indicate moral correction of the convicted person" [32, p. 45].

4. Restoration of social justice as a punishment goal. There are many definitions of the social justice concept in the philosophical and legal literature. The definition proposed by G.V. Mal'tsev is worth mentioning: "in the most general sense, justice means accepted by the society or ruling class as a morally justified and correct scale for measuring actions of the subject in favor (or to the detriment) of

society and other persons with the retaliatory actions of the latter" [27, p. 54]. The term "restoration of social justice" fixed in the law causes heated discussion in science. Despite the variety of scientific approaches, the essence of definitions, as a rule, is reduced to retribution, payment for the crime committed by transforming the harm caused by the offender into deprivation or restriction of his/her rights and freedoms through punishment [49, pp. 621–638]. B.S. Nikiforov describes social justice restoration as follows: punishment leads to the restoration of a normal psychological climate in society, since the crime is repaid by punishment both in social reality and public consciousness [31, p. 69]. Some authors include compensation for material and moral damage to the victim in the content of this goal [18, p. 29]. Opponents of this approach argue that criminal punishment is not of a restorative nature, and restoration of the violated right is possible within the framework of civil legal relations. So, according to M.D. Shargorodskii, punishment is not aimed at restoring the violated right — this is the task that the civil law faces [54, p. 256]. There is also no consensus on the question at what point in time social justice is considered restored. Some authors believe that social justice is considered restored from the moment of sentencing by the court, others argue that this goal cannot be achieved without the sentence execution [49, pp. 631–632]. Without dwelling in detail on all debatable points of restoring social justice, we will note only those that are important for solving the sanction effectiveness problem.

If we are talking about restoration of social justice as a punishment goal, then, indeed, this goal is achieved not only by passing a fair sentence, but also by its execution. It is another matter if we are talking about the sanction effectiveness, i.e. its ability to ensure achievement of the goal to restore social justice. Since the sanction effectiveness is only a punishment effectiveness component, the sanction should be appropriately constructed, i.e. contain a set of penalties ensuring imposition of a fair punishment and providing necessary opportunities for punishment individualization. As noted earlier, the sanction effectiveness is not affected by the quality of law enforcement activities.

Some authors believe that the goal of restoring social justice (as a goal of punishment) is realized as soon as the punishment is imposed (executed). At the same time, they do not reveal what exactly this punishment should be in order for social justice to be restored, do not indicate at all or link the content of the punishment with compliance with criminal law norms. For instance, I.D. Badamshin and V.B. Poezzhalov emphasize that in the criminal law justice is restored when the act provided for by the disposition will be followed by the punishment stipulated by the appropriate sanction, i.e. social justice is related to the exact fulfillment of the prescriptions of criminal law norms [2, p. 95]. However, it is of fundamental importance to identify what kind of punishment in its punitive content will restore social justice. When designing a sanction, it is enough to state its validity, i.e. compliance of the set of punishments with the nature and degree of public danger of the act. In this sense, special criteria indicating the sanction effectiveness are not required. If the sanction meets the previously considered requirement of justice, then it is effective, i.e. it contributes to the achievement of such a punishment goal as restoration of social justice.

Consistency of the sanction

In the scientific literature, formal and logical requirements for designing a sanction of the criminal law norm are quite common. The sanction consistency requirement is one of the most important in this aspect. Sanctions should be consistent both within the framework of an article, chapter, section, and the Special Part of the Criminal Code of the Russian Federation in general [10, p. 114; 17, p. 121]. G.L. Krieger dwells on an important condition to designing sanctions, such as observance of their internal unity and consistency, i.e. selection of punishment types for each crime category that would reflect the nature and relative social danger of some crimes compared with others [10, p.114].

There are many examples of mismatched sanctions in the current Criminal Code of the Russian Federation. Thus, the sanctions provided for in Part 1 of Article 285 of the Criminal Code of the Russian Federation and Part 1 of Article 169 of the Criminal Code of the Russian Federation differ significantly, the norms of which relate to each other as general and

special. Thus, for obstructing lawful entrepreneurial activity (Part 1 of Article 169 of the Criminal Code of the Russian Federation), an official cannot be sentenced to imprisonment, since the most severe type of punishment provided for in the sanction is mandatory work. Meanwhile, other official abuse of power (Part 1 of Article 285 of the Criminal Code of the Russian Federation) may entail imprisonment for up to 4 years.

Correlation of sanctions provided for the theft of items of special value (Part 1 of Article 164 of the Criminal Code of the Russian Federation) and kidnapping (Part 1 of Article 126 of the Criminal Code of the Russian Federation) draws our attention. Imprisonment for up to 10 years can be imposed for the theft of items of special value and up to 5 years for kidnapping.

There are many relevant examples in the literature. So, E.V. Gustova contemplates on punishment for torturing a minor. For the torture of a minor without causing serious harm to health (Paragraph "g" of Part 2 of Article 117 of the Criminal Code of the Russian Federation), the minimum term of imprisonment is 3 years, with serious harm – 2 months of imprisonment (Paragraph "b" of Part 2 of Article 111 of the Criminal Code of the Russian Federation) [10, p. 129].

Thus, it can be concluded that it is necessary to embed a new sanction into the system of existing sanctions so that it corresponds to the public danger of the crime itself, and the sanctions already fixed in the Criminal Code of the Russian Federation. At first glance, it may seem that the first requirement ensures the fulfillment of the second. If all sanctions are designed adequately to the nature and degree of public danger of the crime, then there should be no internal contradictions in the sanctions system. However, this is not quite true. First, the legislator assesses the public danger of crimes at different times; the public danger of some crimes could change, and legislative amendments to the sanction were not made. Second, shortcomings in the design of sanctions may appear, when the legislator does not or partly consider one of the signs that determine the nature and degree of public danger of the act. Moreover, this is true at the stage when it is not possible to unambiguously determine the sanction compliance with the nature and degree of public danger of the crime.

Conclusion

So, the optimal sanction must meet requirements of criminological validity, fairness, effectiveness and consistency, which can be attributed to the key ones.

The criminological validity requirement is voluminous and multidimensional. The sanction that is criminologically valid should be aimed at preventing and reducing crime as a phenomenon, meet scientifically based requirements of the fight against crime, take into account the public danger of the act and the alleged offender's personality, data on the crime in general, its determinants, etc.

The sanction fairness requirement means that the sanction corresponds to the public danger of the crime. It is necessary to develop an algorithm that helps establish a one-to-one correspondence between the nature and degree of public danger of the crime and parameters of the sanction (types and sizes of penalties, alternativeness of the sanction, presence of additional penalties, etc.).

The sanction effectiveness requirement means a sufficient degree of conformity of the result obtained and the goals set before the sanction. General prevention of crime commission and contribution to punishment goals achievement are considered as its tasks. The sanction effectiveness should be assessed with the assumption that the work of law enforcement agencies remains at the same (constant) quality level. As for effectiveness criteria in the most general form, they are dynamics of crime and dynamics of the number of crimes committed by persons previously convicted of crimes. However, they have certain flaws and therefore need more careful elaboration.

The consistency requirement presupposes the need for consistency of sanctions with each other, both within the framework of one article and the Special Part of the Criminal Code of the Russian Federation as a whole.

All key requirements are interrelated and complementary. Thus, the requirement of criminological validity is closely related to

the one of the sanction fairness in terms of determining the nature and degree of public danger of the act; the sanction fairness requirement is linked with the consistency requirement. The demand for effectiveness is connected with the demand for justice in the sense of achieving the goal of restoring social justice, etc.

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INFORMATION ABOUT THE AUTHOR

VIKTORIYA V. ALEKSANDROVA – Candidate of Sciences (Law), Assistant at the Department of Criminal Law and Criminology of the Law Faculty of the Lomonosov Moscow State University, Moscow, Russia, domna80@mail.ru, https://orcid.org/0000-0002-3611-3301

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