



Correlation of Goals and Tasks of Criminal Law, Punishment and Its Execution

VYACHESLAV E. YUZHANIN

Law Institute of the Ryazan State University named for S. Yesenin, Ryazan, Russia, yuzhanin1950@mail.ru, <https://orcid.org/0000-0003-3123-1293>

Abstract

Introduction: the article analyzes criminal and penal legislation norms, their tasks, goals of punishment and its execution, as well as determines their correlation. It is argued that the main social task of these legislations is to protect a person, society and the state from criminal encroachments, while their main legal task is to prevent crimes. All institutions and norms of criminal and penal legislation, as well as purposes of punishment, including correction of the convicted person, should be subordinated to this task. Correction is the main way to prevent new crimes. The problem of convicts' resocialization is also considered in this context. Correction should be part of resocialization of convicts. *Purpose:* on the basis of generalized historical and modern legislative experience in the formation of goals, tasks of criminal law, punishment and its execution, to identify their common and distinctive features, determine their optimization and draw attention of the legislator and law enforcement practice to them. *Methods:* the research is based on the use of methods traditional for criminal and penal law: analysis and synthesis, logical, retrospective, formal-logical, and comparative-legal ones, as well as interpretation of legal norms. *Results:* the author comes to the conclusion that the tasks of criminal law, punishment and its execution should not coincide. The main task that punishment and its execution should focus on is a socio-legal task, which is defined in Part 1 of Article 2 of the Criminal Code of the Russian Federation: protection of the individual, state and society's interests from criminal encroachments. At the same time, prevention of new crimes should be the main goal of punishment, and re-socialization – the key goal of penal legislation ensuring punishment execution. It is crucial to restore the effect of the prohibitive norm of the criminal law (the state of positive criminal liability). All this is determined by the current trend to optimize the goals that can be achieved in the penal system conditions, shift efforts from correcting the offender to his/her re-socialization and adoption to the conditions of life in society, which meets international law recommendations. The tasks of penal law should go beyond the goals of punishment, and penal law should include not only penal, but also post-penal blocks of norms. *Conclusions:* conducting the research, the author substantiates the necessity of revising the goals and objectives of the criminal law and penal legal systems, optimizing them in accordance with the requirements of new trends in social development and international norms of law, directing activities of criminal justice on fulfilling the tasks in demand.

Key words: socio-protective task; protective function of criminal law; crime prevention; correction of a criminal; resocialization of a convict.

5.1.4. Criminal law sciences.

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Introduction.

The main interest in criminal prosecution is to protect the individual, society and state's interests from criminal encroachments. Such a socio-legal function of the state is defined by the legislator in Part 1 of Article 2 of the Criminal Code of the Russian Federation. It has been and remains unchanged throughout the history of the existence of the Russian state. The same function determines goals of punishment. It is perceived as the ultimate goal of punishment of other institutions of criminal law.

This provision corresponds to the views of thinkers and scientists who addressed a similar topic in the 19th and 20th centuries. Thus, Cesare Beccaria argued that the sovereign's right to punish crimes was based "on the need to protect the repository of the common good from the encroachments of individuals" [1, p. 200]. The Russian legal scholar A.F. Kistyakovskii stated, "The ultimate goal of punishment from the first moment of its appearance to the present day was and is the same ... Self-preservation is this goal" [2, pp. 292–293]. According to Karl Marx, punishment "is nothing else than a means of self-defense of society against violation of its conditions of existence" [3, p. 531]. The Russian scientist N.D. Sergievskii wrote about the same thing [4, p. 8].

The same is stated in modern Western criminal law theories. Thus, the English punishment doctrine determines the following goals: retribution, triumph of justice, intimidation, correction of a criminal and protection of the society. The latter is still the main goal of punishment [5, p. 40].

A very important idea was expressed by the French scientist Marc Ansel in the 1970s. He emphasized that different epochs created different goals of punishment, but they all served to ensure protection of society from crimes, that is, social protection" [6, pp. 27–28].

Soviet scientists also supported a similar idea. For example, V.V. Kirin, having con-

sidered the interrelation of branches of the criminal legal complex, noted that criminal punishment is a criminal legislation means to fulfill the task of law enforcement [7, p. 146]. I.I. Karpets, having studied social legal and criminological aspects of punishment, came to the conclusion about protection of the society as its main purpose [8, p. 140]. A similar opinion was expressed by M.P. Melent'ev who desclosed functions of correctional labor law [9, p. 19].

Thus, we have decided on the main task of criminal law and punishment, which originates from the moment of the state existence. The social and protective task dictates the need for legislative registration of other tasks. We have to answer the question, how other goals and tasks of criminal and penal law institutions, such as punishment and its execution, relate to each other?

Criminal law protection and crime prevention (defensive and protective functions)

Part 1 of Article 2 of the Criminal Code of the Russian Federation defines a key interest of the state, a social guideline in the form of the task of criminal law norms, in particular, protection of a person, the state and society from criminal encroachments. By defining punishment and its goals, the state strives to satisfy this interest. In terms of criminal law, punishment ensures this social interest, it is a means to achieve it. Whatever the epoch and socio-economic formation, this main interest of the state always remains, since it predetermines existence of the state itself. The socio-protective task of the state is primary, all other criminal-legal goals and tasks are secondary to it, since they ensure its implementation.

The criminal legislation itself specifies this task as essential. The rejection of it leads to artificial promotion of other tasks as the main ones, overshadowing a crucial task. From a legal standpoint, criminal protection proceeds from the presence of socially dangerous acts and the state's reaction to them. This is obvious if you pay attention to the recent,

quite often repeated changes introduced by the State Duma of the Russian Federation to the Criminal Code of the Russian Federation: the state actively protects itself from possible or ongoing criminal encroachments.

The state fulfils its protective task mainly through establishing prohibitions on the commission of socially dangerous actions in criminal law. Primarily, this is ensured by citizens' voluntary positive implementation of criminal law norms. The prohibitive norm in the form of disposition of articles of the Special part is recognized as a regulatory norm of criminal law, it calls citizens not to violate the law (the state of positive criminal liability). Thus, a prohibitive norm ensures law and order in the country, which is the result of the implementation of the main social and protective function of criminal law.

Criminal law protection is a strategic task of criminal legislation, which is implemented not only through establishment of prohibitions, but also through creation of conditions for citizens to abstain from committing crimes. The state should create legal and organizational conditions for citizens to comply with criminal law prohibitions, as well as establish liability for their non-compliance and practice of its implementation. The state should actively promote citizens' compliance with prohibitions. Only active participation of state bodies can ensure effective implementation of this task.

Criminal law norms are also implemented through a system of means that affect criminal's personality by transforming it and making it not socially dangerous in the future. To do this, the legislator uses another main task – prevention of crimes (Part 1 of Article 2 of the Criminal Code of the Russian Federation). This is the main legal task of criminal law, to which, in our opinion, all criminal legal means of solving it should be subordinated. It should prevent new recidivism.

These two tasks (socio-protective and legal) have received international recognition. Thus, Rule 4 of the Nelson Mandela Rules states that “the purposes of a sentence of imprisonment or similar measures deprivative of a person's liberty are primarily to protect society against crime and to reduce recidivism”.

The preventive task as if complements the socio-protective one, acts together with it (Part 1 of Article 2 of the Criminal Code of the Russian Federation). But at the same time, it is subordinate to the main task, since it ensures its restoration.

By what means will these main tasks of criminal legislation be solved? The legislator offers the solution in Part 2 of Article 2 of the Criminal Code of the Russian Federation by determining elements of crimes, types of punishments and other measures of a criminal nature for their commission. By establishing elements of crimes, that is, prohibitions, the legislator warns that law violation will be followed by punishment. A criminal law norm has both a general preventive effect of prohibitions on all citizens and private preventive effect of punishment on the person who committed the crime. If the first is implemented as a positive social analogue of liability, then the second is a negative legal analogue. These tasks act together; implementation of the law norms on punishment restores the norms-prohibitions. Punishment performs a security function in relation to prohibitions. It is designed to restore the viability (legal personality) of prohibitions.

If criminal law protection performs a general preventive function by establishing prohibitions, then the second main task of the Criminal Code of the Russian Federation (crime prevention) – a private preventive function. In our opinion, this is what the legislator had in mind when fixing these two main tasks of the law. Otherwise, they would overlap and repeat themselves, which is unacceptable in the legal sense: each concept should have its own essential definition and content.

Crime prevention performs a defensive function, not a protective one. The protective function of criminal law prohibitions is static, preventive, affects all citizens and is not associated with a specific subject. In this case, so-called absolute general legal relations arise. Protection is implemented, as we have already noted, through regular preventive measures, regardless of whether the offense has been committed or not.

Private preventive measures are manifested as elements of response to the prohibitive

norm violation or the real threat of its violation. Defense in the form of private prevention of crimes is implemented if the criminal law prohibition is violated, the act called a crime is committed. Defensive measures are implemented within the framework of special legal relations that develop between an offender and state bodies authorized to bring him/her to justice.

Protection of the rights and interests of the person, society and state is regularly provided, and defense in the form of private prevention of new crimes is manifested in violation or threat of violation. Protection is the whole set of measures that ensure these rights and interests. They can be legal and non-legal (organizational, pedagogical, social, psychological, etc.). As stated above, protection is of permanent nature and has a pronounced general preventive character. Defense is provided by the use of punishment, other measures of a criminal legal nature, through the implementation of their goals: restoring social justice, correcting convicts and preventing commission of new crimes. Alleged objects of legal relations (rights, interests, public relations) are the object of protection, while specific subjects of legal relations (criminal, victim, state) are the object of defense.

The state's absolute rights in protection are implemented within the framework of a regulatory legal relationship, and in defense of the rights and obligations of subjects – within the framework of a specific special criminal law relationship, and this happens when imposing and executing a criminal law measure.

If we use the concept of a criminal law norm operating as a sanction, then the concept of protection includes defense as its special case, when active restoration measures are taken to restore effect of the criminal law prohibition. These measures are related to the application of punishment, correction of an offender and prevention of recidivism.

Prohibitions and punishment for their violation (Part 2 of Article 2 of the Criminal Code) are ways to implement the main tasks defined by the legislator in Part 1 of Article 2 of the Criminal Code of the Russian Federation. At the same time, punishment, as an independent phenomenon in criminal law, has its own goals and tasks, which may or may not coin-

cide with key tasks of the Criminal Code. We share the opinion of V.A. Grigor'ev that "identifying criminal law and punishment goals is one of the means by which the tasks of legal regulation are solved. The goals of criminal law are primary to the goals of punishment. If punishment is the only means of solving the tasks of achieving the goal of criminal law, then its goals will coincide with the goals of law. If punishment is one of the means, then its goals can only be part of the totality of the goals the law faces" [10, p. 42].

Prevention of new crimes and correction of convicts

Article 43 of the current Criminal Code of the Russian Federation defines the following purposes of punishment: restoration of social justice, correction of convicts and prevention of new crimes commission. It follows from the content of this law provision that only one goal – prevention of new crimes – coincides with the second task of criminal law.

Here the legislator defines these goals as equal, does not put forward a dominant goal. However, researchers evaluate these goals differently, identifying the main one among them [8, pp. 85–92]. For most of them it is correction [11, pp. 15–20]. For example, in the nineteenth century, with the emergence of a positivist approach to the problem of punishment the Russian scientist M.V. Dukhovitskii wrote that criminal law should learn how to organize punishment so that it achieves its crucial, but also its only goal – maintaining order in the social system. It should not only punish and take revenge on the criminal, as the classical school of criminal law traditionally believed, but should correct him/her [12, pp. 29, 32–33]. Then this idea was supported by the majority of legal scholars, in particular, A.F. Kistyakovskii, I.Ya. Foinitskii, N.S. Tagantsev, N.D. Sergievskii, S.V. Poznyshev, etc. According to A.F. Kistyakovskii, "considering provision of punishment in relation to the only possible and really prevailing punishment in our time, i.e. imprisonment, of various types, it is necessary to recognize provision identical with correction ... Thus, correction of punishment is not only a product of love for one's neighbor, but rather a real need caused by the society's sense of self-preservation" [2, p. 302].

Many modern scientists believe that correction is the end result of punishment execution, that is, the convicted person should have a respectful attitude towards the person, society, work, norms, rules and traditions of human community and strive for law-abiding behavior (Part 1 of Article 9 of the Penal Code of the Russian Federation). Having corrected him/herself, a person is not dangerous for society and will not commit a new crime. This goal is a guaranteed result of the activities of the entire criminal justice system.

The current criminal legislation also links the use of many institutions, including those related to improvement of the legal status of convicts, with achievement of the correction goal. Thus, when imposing punishment, the court should take into account the impact of the imposed punishment on correction of a convicted person (Part 3 of Article 60 of the Criminal Code). When assigning punishment in case of any kind of recurrence, the circumstances are taken into account, due to which the corrective effect of the previous punishment has been insufficient (Part 1 of Article 68 of the Criminal Code). A suspended sentence may be imposed on the guilty person if the court comes to the conclusion that it is possible to correct the convicted person without serving a real sentence (Part 1 of Article 73 of the Criminal Code). Conditional early release from serving a sentence may be applied if the convicted person does not need to fully serve the sentence imposed by the court for his/her correction (Part 1 of Article 79 of the Criminal Code). The legislator provides the possibility of correcting minors when applying coercive measures of educational influence (Part 1 of Article 90, Part 2 of Article 92 of the Criminal Code).

Based on this interpretation of correction, many authors believe that all other goals of punishment, including prevention of new crimes, should be subordinated to it. In this regard, it is concluded that private crime prevention is one of the means to achieve the goal of correction. Correction is perceived as a crucial way to ensure the main social and protective task of criminal law. In the Soviet times, the idea of building communism was promoted in education of convicts. Convicts were to comply not only with criminal law pro-

hibitions, but also with other laws and moral norms; moreover, correction and re-education relied on coercion supported by political organizations. At present, the situation is changing, since the idea of the impossibility to correct convicts is spread among employees of correctional facilities. According to the conducted survey, 73% of the respondents put the solution of the problem to ensure convicts' compliance with regime and discipline requirements in the foreground, while only 13% – their correction. The period of reforms witnessed changes in the state of mind of correctional facility employees, refusing the illusion of possible correction of every convict, as it was in Soviet times. We once called this task a fiction in the execution of punishment [13, pp. 124–125].

Let us contemplate about the purpose of correcting convicts? The answer is obvious: so that a convicted person does not commit a new crime. No wonder the legislator defined in Part 1 of Article 2 of the Criminal Code of the Russian Federation the main task of the criminal law, such as prevention of crimes. The same task is relevant for punishment as one of key institutions of criminal law (Part 2 of Article 43 of the Criminal Code of the Russian Federation). In terms of law, the main idea is that the task of correcting convicts is conditioned by a preventive task, it acts as a means of solving it.

Crime prevention is the ultimate goal of the entire criminal justice system. The main idea here is to restore the effect of the prohibitive norm of the criminal law so that it is not violated by either a criminal or other persons. Correcting convicts should not go beyond this. The main thing is to be within the framework of the criminal law and not to go beyond its limits. It is not the penal system but the society as a whole that should take care of upbringing and re-educating criminals. Operation of the criminal law has certain limits – these are terms of repayment of the criminal record of a person who has served a sentence (Article 86 of the Criminal Code of the Russian Federation).

The idea of recognizing correction of a criminal as a way to achieve the goal of preventing new crimes is developed in the works of M.D. Shargorodskii, N.A. Struchkov, N.A.

Ogurtsov, V.N. Kudryavtsev, E.A. Sarkisova, I.I. Karpets, V.I. Zubkova, M.N. Tagiev and others. An interesting idea in this regard is expressed by N.A. Struchkov, emphasizing that the system of measures to combat crime at the same time is a system of measures to prevent it, the correction system also has a preventive orientation [14, p. 6]. To ensure implementation of punishment means to prevent a new crime on the part of the offender, and, most importantly, protect society [15, p. 14].

Nowadays the idea of legal correction, implying that a convict will not commit new crimes, is becoming more popular. According to A.E. Zhalinskii, the goal of correction is “essentially the goal of special prevention of crimes and is achieved when a convicted person does not commit new crimes” [16, p. 376]. A.V. Naumov also argues that it is “a real task to solve and to force a convict, at least under penalty of punishment, not to violate the criminal law, that is, not to commit new crimes in the future” [17, p. 530].

We could add here that the criminal defense reaction ends with repayment (removal) of the criminal record. All restrictive measures related to a criminal record have a pronounced preventive orientation. Therefore, the positive result of correction of a convicted person is recorded if he/she does not commit a new crime within the period of time stipulated by law.

Therefore, one should disagree with the authors of the Comments to the Criminal Code of the Russian Federation and the Penal Code of the Russian Federation that prevention of crimes is associated with implementation of legal restrictions inherent in punishment, as well as preventive and educational measures aimed at preventing commission of new crimes during the period of serving a sentence, as well as after serving it. At the same time, they do not associate the post-penal period with a criminal record [9; 18, p. 217; 19].

There is another compromise position that correction is aimed at preventing violations of the norms of not only the Criminal Code of the Russian Federation, but also other laws, so that the convicted person leads a law-abiding lifestyle. This position is clearly expressed in Article 7 of the Criminal Executive Code of the

Republic of Belarus, fixing the task of forming “the convict’s readiness to lead a law-abiding lifestyle”.

In our opinion, neither the idea of correcting convicts in the spirit of respect for man, society, work, norms, rules and traditions of human community and stimulating law-abiding behavior (Part 1 of Article 9 of the Penal Code of the Russian Federation), nor the idea of readiness to lead a law-abiding lifestyle (Article 7 of the Criminal Executive Code of the Republic of Belarus) meet criminal law provisions. Most likely, they correlate with the process, and do not determine final results of correction. If they are used as tasks of the penal legislation, they will be exaggerated for the penal system, since these are tasks of the whole society. The main thing in the criminal legal system, with the penal system being its part, is to restore the effect of prohibitive criminal law norms so that the socio-protective function of the state is performed.

Goals and tasks of criminal and penal legislation should be optimized as follows: 1) active protection of the person, society and state from criminal encroachments is the main goal of the legislation regulating the fight against crime; 2) crime prevention is the main direction and result of its achievement; 3) correction of convicts is one of the means of preventing new crimes.

Correction and re-socialization of convicts

Many authors consider resocialization as one of the goals of criminal punishment and understand it as “convicts’ learning of the lost skills of behavior in society, social norms and value orientations, restoration of broken positive social ties” [20, p. 1,107].

The process of re-socialization has been long discussed. Many states include this punishment goal in legislation. Modern Russian scientific literature refuses the idea of correction in favor of re-socialization. Many dissertations in various branches of knowledge are associated with resocialization, not correction [21–25]. The same can be traced in the penal policy. So, in the concepts for the development of the penal system up to 2020 and 2030, the term “resocialization” is more often used than “correction”.

In fact, criminals can be corrected, but if they do not get any assistance in the adaptation to a social life after their release, then they may again embark on a criminal path. Social adaptation is part of resocialization, one of the features that distinguish it from correction. Resocialization is associated with socialization of an individual in society, this is the renewal of his/her socialization into socially acceptable forms of life [26, p. 42].

Today, researchers have come to the conclusion that lawful behavior after serving a sentence is possible due to normal socialization of offenders, and not their correction. Therefore, the purpose of re-socialization of a convict should find its place in legislation. Correction of convicts is only one of the ways of re-socialization. According to M.S. Rybak, "resocialization is a broader definition, including the concept of "correction of convicts", covers the time period not only of the term of serving the sentence, but also convicts' adaptation to conditions at liberty" [22, p. 89].

The definition of this goal in the Penal Code of Ukraine is rather sufficient. The Code "regulates the procedure and conditions for the execution and serving of criminal sentences in order to protect interests of the individual, society and state by creating conditions for correction and re-socialization ... correction of the convicted person is a necessary condition for re-socialization" [27, p. 806].

In addition to correction, the following should be ensured in the process of re-socialization: the sentence is served according to a progressive system, convict's socially useful ties are restored, convicts are prepared for release, problems of social adaptation after release are solved, etc.

The subject of penal legislation should not be limited to regulating the means of correction of convicts as the purpose of criminal punishment. This branch of legislation should become a resocialization branch, "include regulation of those relations that a convicted person has as a subject who has served his/her sentence, but retains a restrictive legal status during his/her criminal record" [28, p. 28].

A similar approach to determining punishment goals and tasks in relation to deprivation

of liberty and its execution is fixed in Rule 4 of the Nelson Mandela Rules: "those purposes can be achieved only if the period of imprisonment is used to ensure, so far as possible, the reintegration of such persons into society upon release so that they can lead a law-abiding and self-supporting life". Rule 87 recommends taking measures for the gradual return of the prisoner to life in society, introducing a special regime for released persons. Rule 90 establishes that "there should, therefore, be governmental or private agencies capable of lending the released prisoner efficient after-care directed towards the lessening of prejudice against him or her and towards his or her social rehabilitation".

For such recommendations of international norms to become a reality, it is necessary to implement them in Russian legislation and, best of all, penal legislation. V.A. Utkin has put forth an interesting idea that from the standpoint of the international approach, penal law can be considered as a mega-branch of enforcement law, which includes three large blocks: pre-penal, penal and post-penal [29, p. 79]

Expanding a subject of penal legislation, it is necessary to remember that it should not go beyond the scope of criminal law norms related to time intervals for the repayment of a criminal record. The final stage of re-socialization, based on other means than correction of convicts, should be carried out within the framework of a criminal record. According to the legislator, this is the limit of solving the problem of preventing recidivism. After repayment (removal) of the criminal record, a person is no longer connected with his/her past crime.

Conclusion.

Correlation of goals and tasks of criminal law and its institutions (punishment and its execution) is the following (from general to particular): socio-protective task (as the main task of criminal law) – crime prevention (as the task of criminal law and punishment) – re-socialization of convicts (as the main task of the penal legislation) – correction of convicts (as part of resocialization and one of the ways to prevent new crimes in punishment).

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INFORMATION ABOUT THE AUTHOR

VYACHESLAV E. YUZHANIN – Doctor of Sciences (Law), Professor, Distinguished Employee of Higher School, professor at the Department of Criminal Law and Criminology of the Law Institute of the Ryazan State University named for S. Yesenin, Ryazan, Russia, yuzhanin1950@mail.ru, <https://orcid.org/0000-0003-3123-1293>

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