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The Content and Interpretation of the Philosophical Category "Measure" in Criminal Law

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Abstract

Introduction: the article studies approaches to the definition of the essence of the philosophical term "measure" and features of its criminal interpretation in the categories of "punishment", "liability", "impact", etc. *Purpose*: to identify the possibility of using criminal punishment (type of the measure and its quantity in the form of size/term) as a universal means of determining the scale of the public danger of each crime. *Methods*: dialectical, formal-logical, observation, analysis, synthesis, classification, system-structural. *Results*: the analysis of general philosophical and legal approaches to understanding the essence of measure shows that this category has many meanings: from an absolute digital value to a variable assessment made by a person depending on his/her development level and environment characteristics. Understanding the essence of measure as something exceptionally constant is a misconception. *Conclusions*: the concept "measure" in the criminal legal meaning represents, first of all, the limit of permissible behavior. In this context, all criminal law should be recognized as the measure, the prescriptions of which make it possible to distinguish between criminal and non-criminal forms of behavior. Punishment cannot be considered as a constant value by which the social danger of each crime is determined. The assessment of the social danger of crime varies significantly depending on social values, the types and meaning of which are subjectively determined (formed, changed, rejected) only by a person.

Keywords: measure; state coercion; punishment; liability; criminal legal impact; public danger of crime; justice; retribution.

5.1.4. Criminal law sciences (legal sciences).

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Introduction

Representatives of the criminal law doctrine identify the "measure" primarily with punishment, or rather with its type and temporary features of implementation. This is not surprising, since the legislator defines criminal punishment as nothing else than the "measure of state necessity", consisting in the deprivation or restriction of the rights and freedoms of a convicted person (Part 1 of Article 43 of the Criminal Code of the Russian Federation).

But even a superficial comparison of the essence of any punishment will cast doubt on the possibility of accurate *correlation* of the harm caused by the crime with the deprivation and legal restrictions that a perpetrator undergoes in the execution of the punishment imposed on him/her. For instance, for causing death by negligence, a person may be imposed correctional labor for up to two years. The same punishment may be imposed on a person who has made a deliberately false denunciation of the crime commission (Part 1 of

Article 306 of the Criminal Code of the Russian Federation), and the material and moral harm from the act may be minimal or generally undetectable. There is a certain number of such examples in the current criminal law. It is often difficult to give an unconditionally positive answer about the fairness of punishment, which is provided for by the sanction of the Special Part of the Criminal Code of the Russian Federation for the corresponding socially dangerous act. Hence, the identification of a type of specific punishment and a coercive measure, the essence of which has not yet been definitively determined by penitentiary scientists [16, pp. 254–260, 282–289], requires deep consideration. In addition, the word "measure" has several lexical meanings that do not intersect with each other [13, p. 338], many of which, with a certain abstraction, can claim to be a characteristic of punishment as a criminal category.

The main part

The content of the category "measure" remains a subject of philosophical research, originated in ancient times. The analysis of the philosophical treatises currently available confirms that at all times the category "measure", along with fundamental categories and ideas of human existence, has aroused interest of thinkers. Perceiving this category as a means of fixation or generalization, used when comparing various objects, their properties and other material and immaterial characteristics, researchers define it differently. The definition and subsequent justification of the measure as a fundamental metaphysical category is given in the works of representatives of classical German philosophy [2, p. 277], however, even representatives of ancient philosophy had different opinions about the possible content of the measure. Subsequently, the semantic meaning of the measure remained mostly unchanged, although it was provided with rather capacious comments or suggestions related to the practical application of existing knowledge about the measure.

Thus, Pythagoras, understanding the world as a "magnificent order", believed that this order is provided by a strict numerical value. Therefore, every object or phenomenon existing in the world had to have a universal measure of evaluation – a number, and the evaluation system in the world is formed on the basis of the laws of integers [6, pp. 316–319].

The measure in Solon's philosophy is a category that characterizes the maximum permissible value. Going beyond the measure meant violating some good, causing evil. In this sense, the good was considered as a synonym for the measure [15, p. 156]. The search for the measure in public relations, establishment of state institutions and definition of their powers is caused by the desire for happiness for representatives of all social groups. On the contrary, the rejection of a sense of measure and proclamation of permissiveness lead to tyranny, an increase in the number of the annoyed and other negative prerequisites generating socio-political catastrophes.

Another method of determining the essence of measure was proposed by Protagoras. Unlike his contemporaries, he demonstrated a subjective approach to defining the essence of measure, stating that "Of all things the measure is Man, of the things that are, that they are, and of the things that are not, that they are not" [2, p. 283]. Based on this postulate, it is possible to develop the idea that the measure cannot have any constancy at all, it is determined only by a person depending on his/her level of intelligence, ideas about the world, needs and other factors affecting the assessment of surrounding objects and phenomena.

Plato did not specifically single out the category of measure, using it in his writings without specifying the philosophical content. Contemplating on the spiritual good, he noted that proportionality (moderation) was one of the components of the good. In his opinion, the measure can be used as a means of measuring objects of the material world, as well as in the quality of a certain average value between excess and deficiency [14, p. 199, 621], that is, categories that cannot be evaluated in numerical values.

Aristotle drew attention to the presence of a certain set in the definition of the essence of measure. It was considered as a means to cognize quantity, defined through a single and indivisible, having a numerical expression. The measure is a kind of a standard to establish the conformity/non-conformity of homogeneous objects compared in quantity and quality [1, pp. 159, 160, 244]. Besides, it

has a deeper philosophical meaning, since it helps determine the category of quantity. In this part, the measure is a median value between two opposites that are not subject to numerical expression, and is used to assess state policy and public relations that take place in management activities of government institutions [1, pp. 468–469].

Subsequently, representatives of German classical philosophy proved that measure is one of the fundamental scientific categories [2, p. 277]. Obviously, this was caused by the need for a universal understanding of the measure in all kinds of sciences, as well as the increased practical need to solve the problem of the essence of measure and the possibility of objectively establishing reference values.

I. Kant considered the measure as a unit value, but the measure itself, in his opinion, also should be evaluated: "when assessing the value, it is not only about a set (number), but also about a unit value (measure), and the unit value... always requires something else as a measure, with which it could be compared ... any definition of the value of phenomena, of course, cannot give an absolute concept of value, but always gives only a comparative concept" [8, p. 254]. With regard to this circumstance, I. Kant, dwelling on the question of determining the measure, drew attention to the great importance of the one who evaluated the object under study, thereby indicating subjectivity of such a decision, as well as dependence of the interpretation of the content of measure on cognizer's abilities [7, pp. 120–121].

Hegel G.W.F., defining the measure as a unity of quantitative and qualitative, distinguished three varieties: specified quantity, specific measure and real measure. He noted that the first variety had the simplest and most widespread content, reduced to combining a numerical value with a reality subject. The specified quantity should be real, that is, the numerical expression of the declared items should really exist in nature.

A specific measure characterizes the internal relationship between quantitative and qualitative characteristics of one object. This is a more complex and higher level of the content of measure, which extends to one subject, while simultaneously characterizing a certain set of its individual components. For example, thirty members of the armed forces (a specified number) represent one army subdivision – a platoon (a specific measure); a certain number of residential buildings and other buildings on a certain territory form an urban neighborhood, etc. If the specified quantity completely depends on characteristics of a person's perception, then the specific measure no longer has such a dependence and is an objectively existing fact.

The real measure is an absolutely indistinguishable characteristic of the studied subject or phenomenon, which is formed by the specific measures already described, composed of specified quantities. The real measure does not and cannot have a quantitative expression, since it is represented by the only kind in the world – the real measure of the existence of the object of interest. Taking into account these features, the real measure can be equated to the immensity or infinity of the measure, since the measures combined in it become a single whole [4, pp. 422–442]. Space, society, etc. can be recognized as manifestations of the real measure.

The Hegel's three-tier evaluation of the measure is clearly traced in the Marxist teaching, when initially a strictly defined object receives a value of "gold", that is, in monetary terms (a specific quantity), then a general value expression is formed for various groups of heterogeneous objects (a specific measure), and finally, the real measure is expressed in the universal form of value that enjoys universal recognition (a scale of prices) [12, pp. 51–54]. Solving the problem of subjectivity of determining the universal value (the real measure, according to Hegel), K. Marx proposed "abstract-universal work devoid of individuality" that could not be quantified, stating that "universal abstract working time receives an imaginary being in their price, in which they are a homogeneous and only quantitatively different materialization of the same substance of value" [12, pp. 53–54].

The listed approaches to determining the essence of measure formed the basis for the formation of categories of freedom [5, p. 99; 11, p. 96–97], equality [10, p. 263–264], justice, legal awareness and law and order [3, p. 79; 9, p. 50; 17, p. 200], proposed in the sources of the philosophy of law. The overwhelming majority of researchers point out that every person having complete freedom in choosing behavior is doomed to be killed by the one of

his/her kind. Therefore, the guarantee of the creation of a civilized society that provides everyone with both security and comfortable existence is mutual limitation in the rights and freedoms of everyone just as much as it is required to achieve these goals. Such a state of reasonable restriction of the rights and freedoms of each individual is characterized as equality, and relations between people on the basis of mutual respect and observance of the rights, freedoms and legitimate interests represent justice. It is equality and justice that form the general idea of measure implemented in the law of any civilized society.

The essence of measure gained practical significance through the legislative consolidation of the basic categories of criminal law, one of which is criminal punishment (Part 1 of Article 43 of the Criminal Code of the Russian Federation). However, understanding all the semantic versatility of the measure, it is impossible to reduce its essence to a specific type of impact, which is regulated by criminal law norms. All possible interpretations of the measure in the general philosophical doctrine, as well as in the philosophy of law, are embodied in the content of modern criminal law.

The simplest expression of the essence of measure is the size or term of criminal punishment. Most penalty types fixed in Article 44 of the Criminal Code of the Russian Federation are determined by the term, calculated, according to a general rule, in years and months. Counting up the time of detention, the term of this punishment can be calculated in days and hours. For example, one day of detention is equivalent to one and a half days, that is 36 hours, of detention in a disciplinary military unit, serving a sentence in a juvenile educational facility or a correctional facility of general regime (Part 3, Paragraph "b" of Part 3.1 of Article 72 of the Criminal Code of the Russian Federation).

Punishment can also be determined by the amount of money recovered or withheld from a convicted person. This is carried out in the execution of such types of punishments as fines, correctional labor, restriction on military service and forced labor. It should also be noted here that the Criminal Code of the Russian Federation does not contain an absolutely definite term or amount of punishment, setting its minimum and maximum limits in the corresponding norm of the General Part. The numerical specification of the term or size is fixed as a result of the completion of the criminal liability individualization process, that is, establishment of the type of punishment and its exact size (term) in the sentence.

Thus, the measure in criminal law as a quantity expressed in the exact numerical value is specified in terms of time or monetary units in which the corresponding types of criminal penalties are calculated.

The most common understanding of the measure in criminal law is its identification with a means of impact for committing socially dangerous acts. Thus, in accordance with Part 2 of Article 2 of the Criminal Code of the Russian Federation, as well as the corresponding Part 1 of Article 43 of the Criminal Code of the Russian Federation, punishment is the main measure in criminal legislation. As the measure, punishment determines types and scope of the rights, freedoms and legitimate interests in which the perpetrator of the crime is restricted or completely deprived. It also shows strict interdependence of crime and punishment. Since the separation of branches having a specific subject of legal regulation and protection, it has become axiomatic to assert that a crime has the greatest social danger (harmfulness) in comparison with any other types of offenses, the commission of which does not entail criminal liability.

The high public danger of a crime determines the content of criminal punishment – the rights, freedoms and legitimate interests in which the convicted person is at least limited in the exercise of criminal liability. All of them have increased significance for a person, thus they are provided with constitutional guarantees by the state. First, the content of certain types of criminal penalties includes deprivation of the right of ownership of certain property guaranteed by Article 35 of the Constitution of the Russian Federation. As a rule, this is expressed in a fixed amount of money withdrawn from the convicted person, for example, when a fine is imposed. Also, this amount can be set in proportion to the size of the convicted person's salary, the cost of the crime subject, etc. Such deprivations are included in the content of fines, correctional labor, restrictions on military service and forced labor.

Second, a significant number of punishments provided for in Article 44 of the Crimi-

nal Code of the Russian Federation restricts or deprives the convicted person of the right to free labor guaranteed by Article 37 of the Constitution of the Russian Federation. For certain punishments, this deprivation comprises their essence, because it is directly indicated as a substantive element: deprivation of the right to hold certain positions or engage in certain activities, mandatory labor, correctional labor, etc. Some types of punishments, although they do not provide for the restriction of this right, but actually deprive the convicted person of the freedom to choose a type of work (detention in a disciplinary military unit, life imprisonment, etc.).

Third, certain punishments, the execution of which involves the isolation of the convicted person from society, significantly restrict the rights of free movement, choice of place of stay and residence guaranteed by Article 27 of the Constitution of the Russian Federation. This is ensured by the mandatory presence of the convicted person on the territory of the relevant institution implementing criminal punishment in the form of deprivation of liberty. In addition, when executing a sentence in the form of forced labor, the convicted person's right to freedom of movement, choice of place of stay and residence is also significantly restricted, since this punishment is carried out in correctional centers, beyond which the convicted person is allowed in exceptional cases.

Finally, the possibility of depriving a criminal of life by imposing a death penalty is legally preserved. The norms providing for the highest measure of criminal liability (paragraph "n" of Article 44, Article 59 of the Criminal Code of the Russian Federation) have not undergone any changes since the entry into force of the criminal law. In this regard, we can admit that the modern Russian criminal law establishes a punishment, in the application of which the convicted person is deprived of the right to life guaranteed by Part 1 of Article 20 of the Constitution of the Russian Federation.

The analysis of all the listed rights, freedoms and legitimate interests that constitute the essence of criminal punishment allows us to recognize the following fact: one of the functions of criminal punishment is a unified assessment of the severity (nature and typical degree of public danger) of all types of crimes provided for by the norms of the Special Part of the Criminal Code of the Russian Federation. This is expressed in the fact that socially dangerous acts that are fundamentally different from each other in terms of legal characteristics (type of object, qualitative and quantitative indicators of the harm caused or other negative consequences, features of guilt, etc.) in accordance with the sanctions of criminal legal norms are provided in most cases by the same types of punishments. The highest degree of universality, undoubtedly, has a punishment in the form of imprisonment for a certain period (paragraph "l" of Article 44 of the Criminal Code of the Russian Federation). It can be appointed for almost any act prohibited by criminal law. (Ideally, this statement should have no exceptions and reservations. Otherwise, when the legislator does not establish the possibility of imposing deprivation of liberty for any crime (Part 1 of Article 169, Article 185.1 of the Criminal Code of the Russian Federation, etc.), it becomes impossible to separate such a crime from other offenses that do not form the basis for criminal prosecution, but entail, for example, disciplinary liability).

We believe that imprisonment for a certain period of time is a universal measure in modern Russian criminal law. Despite the criminal legislation humanization policy that has been carried out for quite a long period of time, focused on the search for alternatives to deprivation of liberty, the latter is still officially presumed as a reference measure used in determining both the severity of the crime committed and the severity of most punishments. The first of these statements is confirmed in Article 15 of the Criminal Code of the Russian Federation, which establishes the rules for assigning the type of crime to the appropriate category. Thus, the category of the act provided for by the Special Part of the Criminal Code of the Russian Federation depends, among other things, on the maximum possible term of imprisonment imposed for this crime.

The universality of one day of imprisonment as a means of measuring the severity of many types of punishment relative to each other is also confirmed by the comparison rules provided for in Articles 71, 72 of the Criminal Code of the Russian Federation. In this part, it should be noted that each punishment in

its content is intended to provide restriction/deprivation of rights and freedoms, the actual comparison of which is impossible in principle because of their heterogeneity. This becomes obvious when carrying out a comparative analysis of the content of criminal punishments: the right to ownership in forced labor – freedom of choice of work in compulsory labor – the right to free movement in restriction of freedom, etc. The problem is solved by the legal establishment of one day of imprisonment as a reference measure that ensures "bringing to a single denominator" all terms of heterogeneous types of criminal penalties. The same technique makes it possible to understand the severity of the punishment imposed, if it can be correlated with imprisonment calculated in days, but these comparison rules are not universal, since they do not apply to penalties in the form of a fine, deprivation of the right to hold certain positions or engage in certain activities, deprivation of a special, military or honorary title, class rank or state awards, as well as life imprisonment and the death penalty.

However, the criminal law category "measure" is applicable not only to criminal penalties. It seems that it would not be a mistake to point out the presence in the current criminal law of "secondary measures", also included in the criminal liability. Similar to criminal punishment, they are applied to a person found guilty of committing a crime, and in general are aimed at achieving the same goals that are set before criminal punishment (Part 2 of Article 43 of the Criminal Code of the Russian Federation).

Criminal liability measures can be differentiated from criminal punishment primarily on formal grounds: they are not included in the system of criminal penalties listed in Article 44 of the Criminal Code of the Russian Federation. On substantive grounds, that is, according to types of the rights, freedoms and legitimate interests that a criminal is deprived of or restricted, it is more difficult to differentiate them due to the possible identity of limited benefits of a perpetrator. For example, the right to freedom of choice of the work activity type is limited both by the punishment in the form of deprivation of the right to hold certain positions or engage in certain activities, and by the criminal record of the person in respect of whom the imposed punishment has been executed. At the same time, the obligation not to visit, for example, places of entertainment, the obligation to undergo a course of treatment, as well as the performance of other duties that contribute to correction of a convicted person, are included in the content of the conditional sentence of a criminal, but are not officially represented by the content of any criminal punishment.

Finally, it is impossible to ignore the criminal law institution of other measures applied to persons who, on the grounds fixed in the current legislation, are not subject to criminal liability for the socially dangerous act committed. Such measures currently include compulsory measures of a medical nature and compulsory measures of educational influence.

Despite the terminological identity, criminal liability measures and other listed measures do not have an essential uniformity. The measure of criminal liability is formed on the basis of the principles of equality and justice, since it is designed to provide proportionate compensation for the harm that a criminal caused to the injured person, society and (or) the state. In this case, punitive capacities of the criminal liability measure are realized in the amount corresponding to the severity of the crime committed.

Compassion and mercy principles are the basis for the formation of other measures of a criminal legal nature. Their application is also associated with the deprivation and restrictions of similar rights, freedoms and legitimate interests, which characterize the essence of many measures applied in the criminal liability implementation process. They are appointed solely by the decision of the court in connection with the commission of an act prohibited by criminal law. However, when they are applied, the balance in public relations, disturbed by the commission of a socially dangerous act, is restored without punishment and compensation for the harm actually caused. On the contrary, this restoration is provided by means of medical or educational (moral) influence, which implies that a person can assess social values adequately. Therefore, other measures should be considered as the ones of social support and assistance to the individual, the application of which excludes punitive influence of the state and society.

At a higher generalization level, it is stated that the measure in the criminal law is expressed by general boundaries of the permissible impact on a person, as well as definition of the grounds for such an impact. Taking into account the assessment of permissible behavior of any individual, society and tools of state coercion, the limits of this behavior are determined, which may entail significant negative consequences. Going beyond these limits is socially dangerous and, as a result, criminally punishable. Therefore, criminal law as a whole can be determined as a measure by which the maximum permissible behavior of a person in society is established. These hypothetical boundaries find their concretization in the form of requests for specific actions provided for by the norms of the Special Part of the Criminal Code of the Russian Federation.

The whole set of measures stipulated by the criminal law, which apply to persons who have committed socially dangerous acts, can also be recognized as a general measure of criminal legal impact. This part determines how much modern criminal law influences the status of a perpetrator. The earlier assessment of the content of both criminal punishment and other measures of criminal liability shows a wide, almost unlimited (immeasurable) range of negative impact on a criminal.

The minimum limits are currently reduced to the fulfillment of a number of conditions stipulated by law, which can ensure the decision to abandon criminal prosecution and termination of criminal liability (Articles 75, 76, 76.2 of the Criminal Code of the Russian Federation, etc.). The upper limit of the criminal legal impact presupposes the possibility of a convicted person's life as a result of execution of the death penalty. De facto, the modern state can influence a criminal to the limit of his/her indefinite detention in isolation from society, that is, life imprisonment.

The problem of preserving or excluding the death penalty in criminal law remains unresolved. There are quite a lot of arguments both for and against it, the validity of which is quite difficult to challenge. However, from the standpoint of assessing the measure of possible response to a criminal act, it can be concluded that the preservation of this type of punishment in the criminal law is necessary. As long as murders are committed, society has the right to demand a fair measure of retribution. In this case, we are no longer talking about the excessive cruelty of the legal response, but about the equality of citizens and justice. These categories simultaneously act as both principles of criminal law and fundamental philosophical ideas that form the content of criminal law and limits of criminal law retribution.

The ideological equality of citizens presupposes not only the inadmissibility of harming one's neighbor (Kant's categorical imperative), but also a similar retribution to the criminal for the harm caused. Lowering the upper limit of the possible criminal legal impact on a killer detracts from the idea of justice, and therefore may be unclaimed and not recognized as a legitimate solution. In this regard, taking into account the postulates of the "golden rule", which are recognized in any society, regardless of the degree of civilizational development, we consider it necessary to preserve the limits of criminal legal impact stated in the current Criminal Code of the Russian Federation without any reservations and (or) actual restrictions currently in force.

Conclusion

Summing up the study of the meaning of the philosophical category "measure" for criminal law, we consider it necessary to return to the statement of the ancient philosopher Protagoras that it is man who is the measure of everything in the world. Its validity can be proved even by analyzing the amendments and additions to the current criminal law. Thus, we have witnessed not only particular editorial changes of concerned certain criminal law norms, but also cardinal changes related, for example, to the rules for categorizing crimes, determining priorities in the choice of types of punishments with the invariability of the assessment of the public danger of many crimes, etc.

All this, if not confirms, then at least makes one think about how possible it really is to talk about a measure in general and in criminal law in particular, since it is understood as an unchangeable, objectively existing constant value, the state of which does not depend in any way on the consciousness and will of a person. Even seemingly time-tested ideas about the limits of acceptable behavior in society are periodically accompanied by adjustments and clarifications, that is, they also

experience the processes of rethinking and reassessment, taking into account the development of ideas about justice, equality and humanism.

Therefore, it cannot be excluded that modern limits of the criminal law measure in its broadest sense will change more or less. This, in turn, will ensure the continuity of the process of searching for that "golden mean" when a person grows aware of proper provision of his/her own security, achieved by the least amount of deprivation and legal restrictions.

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