FOREKNOWLEDGE REGARDING THE CRIMINAL PUNISHMENT AND ITS PURPOSES

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It is a common fact that the Penal Codes of most states lack the norms regarding the notion and purposes of the criminal punishment. In fact, the penal legislation only determines the system of punishments, which can be named in case a certain crime is committed, this being the object of research of the penal law doctrine. At the same time, it is to be noticed that there is a great number of conceptions regarding the punishments, which are different depending on their contents: starting from the idea of reward according to the principle of retaliation, to the idea of resocialization of the felon.

Generally speaking, the science about the punishment and its purposes is developed in different states by theorists of the penal law. For example, the Romanian authors state: the committing of the crime and the establishing of the criminal liability for it have as certain consequence the application of penal law sanctions stated by the law, "for the reestablishing of the lawful order, for the constraint and reeducation of the felon" (Bulai C. Filipaş A. Mitrache C., op. cit., p. 140).

The new penal code situates the punishments in the first chapter of the third title from the General Part according to the hierarchy in which the punishments granted by the definitive judicial sentences are to be executed, as follows:

- main punishments;
- secondary punishments and
- complementary punishments.

In the new penal code there are stipulated three features of the punishment:

- the legal character – the punishment is stated only by the law;
- the equality character – the granted punishment is not influenced by the social status of the felon;
- the personal character – the punishment is granted individually and only to the person who committed the crime thawed by the penal law or participated in the committing of the crime.

The Penal Code of the Republic of Moldova, for the first time in the history of the inland penal legislation and among the little foreign penal legislation, has formulated the definition of the punishment, establishing at the same time its purposes. It is probably the closest to the fulfilling of a question stated in legislation. As a consequence, art. 61 states: "The criminal punishment is a measure of political restraint and a means of correcting

and reeducating of the convict which is applied by the instances, in the name of the law, to the persons who have committed crimes, causing them certain lacks and restrictions regarding their rights." The institution of punishment has developed from a historic point of view, from private to public. In the prestatal joint formations, the penalties for trespassing the collective or personal interests bared a common or interpersonal character. Once with the development of the state and of the law, the putting into practice of the punishment for the crimes undergoes some modifications: in the first instance, in corroboration with measures of public and private constraint, then becoming more and more public and, eventually, transforming themselves into measures of statal constraints.
In the English penal law studies, the punishment, usually, is defined as "authoritative causing of suffering to the person for having committed a crime." The American authors understand by punishment a deprivation (suffering) determined, established through the decision of the instance for the violation of the penal interdiction. Consequently, these focus on the establishing of the purposes of the punishment, but some further, more detailed explanations are not to be missed. For example, the American author, J. Hallom, states: "In the first place, the punishment represents a privation (a suffering). Secondly, it is forced. Thirdly, it is called in the name of the state; it is sanctioned. Fourthly, the punishment implies the existence of some rules and their violation, established, formally, by the decision of the instance. Fifthly, it is applied to those who break the legal stipulations, who cause damage, but this consists in a sum of norms, which have to take into account that both the damage and the punishment have significance from an ethic point of view. Sixthly, the quantum and the type of punishment depend on the damaged that has been caused, meaning that they are proportional to the damage, but can be attenuate or severed by the personality of the felon, by his reasons and intentions." (Курс уголовного право. Общая часть. Том 2. – Москва: Зерцало, 1999, с. 340). Nevertheless, we can say that the American doctrine has undergone the influence of the basic theories of the punishment, issued by the English penal law.

In England, referring to the mission of the criminal punishment there have been remarked there basic theories:

- the punishment is a reward;
- the punishment is a means of intimidation;
- the punishment is a means of correcting the convict.

Each of these orientations demand for some explanations. Currently, the most widely used idea is that of the application of the means of penal repression, which to accomplish all the three purposes- reward, intimidation and correction, although in certain cases the punishment can differ depending on the degree severity.

The English contemporary theory sustains that the punishment is a reward (the theory of social reward), and it is perceived as a reward to satisfy the feeling of balance of the victim (the installment of the social truth). In this case, the state appears as a means through which the person who suffered the damage can feel a satisfaction of feelings. Still in this respect, there is one more interpretation that the punishment can be seen as redemption. The English authors, Cross and Jons explain that the felon exposes himself to suffering, so that he realizes the justice of the punishment (*Преступление и*

наказание в Англии, США, Франции, ФРГ, Японии. Общая часть. – Москва: Юридическая Литература, 1991, с. 178).

It is also spread the interpretation that the punishment as a reward represents a means of moral reprimand, that the entire society does not accept and condemns such an illegal behavior. The incrimination of the penal deed must be done according to the severity of the crime and the felon must be punished accordingly. The English jurists explain that the punishment given in this case is justified. At the same time, we can deduce from this theory that, out of the desire to make justice, one can never break the principle according to which the damage caused after the application of the punishment not to overcome the one after the crime has been committed.

The punishment as a means of intimidation in the English penal doctrine bares a double purpose of prevention: general and special. The representatives of this theory perceive the convict as an offering for the society for the interests of prevention, meaning that the convict is punished so that people can learn something out of it.

Specific to this theory is the deviation from the principle of ”fair punishment”, from the rule that the damage of the punishment cannot exceed the damage of the crime. Currently, the correction as a special purpose of the punishment has become very popular among the visions of the English theorists, and as a consequence, reforming projects in the theory of the criminal punishment have occurred. Starting from these premises, a criterion to apply the punishment or other measures consists not in the severity of the crime, but in the subjective danger of the felon for the society. The committing of the crime itself is seen as a basis for sanctions to be applied on the subject. The commodity of this theory, according to the opinion of the English theorists, consists in maintaining the possibility to apply both repressive actions and those lacking character, but more accessible and less expensive.

What is to be noticed is the value of this theory: It ensures the resocialization of the felon, this being the very purpose of the punishment. But, generally, the English doctrine sustains that the application of the punishment has as purpose the reward, the intimidation and the correction. Until now, the English penal legislation has not yet formulated the purposes of the criminal punishment, as it is stipulated in the Penal Code of the Republic of Moldova, in art.61: ”The punishment has as a purpose the reestablishing of the social balance, the correction of the convict, but also the prevention of committing new crimes by both the convicts and other persons. The execution of the punishment does not have to cause physical sufferings and not to humiliate the dignity of the convicted person.” But, in fact, as I have stated before, few of the penal legislations define both the notion and the purposes of the criminal punishment.

A similar situation can be encountered in the inland penal legislation and in the Penal Code of the Russian Federation, and more than that, this was the first mentioned among the states of the world whose legislative has ensured the notion and purposes of the the criminal punishment.

In the penal legislations of some states the purposes of the punishment are formulated indirectly. The penal code model of the USA from 1962, formulated the

purposes of putting into practice of the principles regarding the pronouncing of the sentences, among which:

- preventing the committing of new crimes;
- helping and educating for social reintegration of the convict, etc. (Курс уголовного право, указ. соч., с. 341.)

The indirect mentioning of the basic purposes of the punishment is stated in the current legislation of the USA. Consequently, the second part of art.3553 from the Penal Code of the United States, among the factors that must be taken into consideration when establishing the criminal punishment, we can enumerate the following: the punishment must contribute to the respecting and appreciating of the law; to influence in a positive way the criminal behavior; to ensure the society of new crimes; to create possibilities and conditions for the convict to finish his studies, his professional training, medical care or other types of cares. (Уголовное законодательство зарубежных стран (Англии, США, Франции, Германии, Японии). Сборник законодательных материалов/ Под ред. И. Д. Козочкина. – Москва: Зерцало, 1999, с. 77).

The penal Code of the State of New York from 1967, among the purposes of the penal law, it enumerates: the insurance of public security, the admonition of crimes through intimidation, the social reestablishment of the convict, his isolation when the necessity for the society demands it (p. 6 art. 1.05) (Ibidem, p.98).

In the American Penal Law textbooks, in the documents of the American Ministry of Justice, there are often encountered four main purposes of the punishment: reward, intimidation, the deprivation of the convict for committing other crimes, the correction of the convict. (Никифоров Б. С., Решетников Ф. М. Современное американское уголовное право. – Москва, 1990, с. 71).

By reward, one understands the punishment given to the convict in order to express the condemnation by the society of the crime he has committed. This purpose, unlike the other three, is to be considered not useful because its only purpose is for the convict to get the proper punishment. But the sustainers of this theory, such as the author J. Hall considers that the prevention against other crimes and the social protection are just some repetitive things that have no real support.

The intimidation, as in the English Penal Code, is viewed from two different perspectives: general and individual, both of them oriented towards the prevention of crimes, either committed by a group or just a single person, but in the United States, the focus is on the general intimidation.

The deprivation of the possibility to commit new crimes, consists in the isolation of the convict from the society, protecting in this way the members of the society from different crimes.

By correction, we should understand modifications, changes in the behaviour of the convict so that he gives up the criminal behaviour. A real part of the representatives of this theory are psychologists, and many other specialists who consider that the origin of criminality resides in the biological nature of the individual.

In the latest years, in the USA a new theory regarding the guilt is to be noticed, which would gather all representatives of other theories. Taking into account and analyzing everything that has been said or written, they have come to the conclusion that

the purpose of the criminal punishment depends not only on the period of time but also on the one who is given the punishment. In reality, each and every instance, judicial organ, perceives the purposes of the punishment differently.

In this respect, a new theory, a mixt one is to be seen, regarding the purposes of the punishment. The partisans of these new theories opinionate that there are two different groups of purposes that the punishment involves:

- useless (their accomplishment does not give real, practical results);
- useful (their accomplishment is real, they have practical results).

All these purposes, in the vision of the authors, must have a reciprocal character.

The attitude of the American journalists towards or regarding the purposes of the criminal punishments, have great influence on the decisions given by the court. In this respect, two different persons who have committed the same crime, in the same conditions, have received different punishments because they were in different states.

In France, the problem of the essence and the purposes of the punishment has, at its basis, two different conceptions: the contemporary neoclassicism and the new social defense. The representatives of the first trend insist on the realization of two main purposes of the punishment: reward and intimidation. At the same time, the severity of the punishment must correspond to the severity of the crime. The essential traits of the punishment themselves represent the expressing of its purposes. The punishment has a well defined character, meaning that the French penal code must avoid the punishments to be applied on an undefined term. Consequently, the necessity of the execution of the punishment has been ascertained in direct and exact correspondence to the subsequent attenuation less of the detention regime, on parole liberation before the term, other privileges, otherwise, the punishment will reduce its importance regarding intimidation and reward.

The representatives of the second trend are the opponents of such a manner of perceiving the punishment. As purposes of the punishment, they indicate the correction and resocialization of the convict. ”The penalty must be applied in such a way so that it reeducates, and at the same time it must be acknowledged that its resocialization purposes are the basic, focusing on the neoclassicist conception of simple education which has as main purpose only the reward. ”Firstly, the punishment must have as main purpose the reintegration of the felon in the society.” (Ансель М. Новая социальная защита. – Москва , 1970, с. 267-268).

In this context, it is worth to mention that the French Penal Code from 1992 does not contain the notion of punishment or the enunciation of its purposes, but, indirectly, as in the case of the penal legislation in the USA, the French Procedure Penal Code referring to some penal and juridical actions, prescribes some purposes of the punishment. As a result, for the act of committing some crimes (manslaughter with rape, manslaughter of a minor), the persons serve their sentence in some special institutions, ”which can ensure their further medical and psychological conformation.” This disposition implies that the temporary leaving of the institution has as main purpose the preparation of the medical and psychological process of conformation, ”in order to preserve the family relations, the fulfillment of some obligations which demand for his presence”, etc.

The probation can be possible only in case ”certain information exist about the social readaptation of the convict” (art. 729). (Уголовно-процессуальный кодекс Франции. – Москва: Юридический колледж МГУ, 1996).

The social readaptation is foreseen in many other penal norms- art. 720-4, 721-1, etc. consequently; the French legislator focuses the resocialization as a purpose of the punishment.

We can draw the conclusion that the current French penal legislation tries sometimes to blend the ideas of the neoclassicism, when it considers to put into practice some severe punishments for having committed some crimes as severe as the punishment, so that the purpose of resocialization of the convict comes secondly, aiming at the reward. For example, in the field of the crimes the long-term punishments have been reduced, considering that their putting into practice has not been efficient, on the contrary, the convict being deprived from family, the working process, professional qualification, etc., he is doomed to reintegrate in society with great difficulty.

The Polish Penal Code from 1997, in the chapter regarding the rules about the infliction of the punishments and the penal and juridical actions, does not define the concept of punishment, but it speaks about the ”preventive purposes and education” of the punishment, which can be ”accomplished depending on the convict and the necessity in the field of forming a judicial conscience in society.”(art.53) (Уголовный кодекс Республики Польша. /Под общ. ред. Кузнецовой Н. Ф. – Минск: Тесей; 1998, с. 22). In case of the punishment granted to a minor, the instance must, in the first place, to take into account the purpose of educating the convict.”(art.54) (Idem, p. 22).

The German Penal Code does not explain the essence of the notion of punishment, but the doctrine states that the punishment is according to its very purposes. Consequently, in the German doctrine regarding the purposes of the punishment, we can perceive two trends, regarding the theory of the punishments: absolute and relative.

According to the first trend, the main purpose of the punishment is the reward for the evil caused. This is the absolute purpose of the punishment, other purposes except this one is not to be taken into account. The pleaders of the second trend consider that the main purpose of the punishment is to prevent the committing of new crimes by the method of intimidation.

We have also encountered some mixt theories regarding the punishment, this being the core of the current theory of the punishment. In the comments included in the German Penal Code is to find that ”the purpose of the punishment is to intimidate the wrongdoer, and generally, to prevent any person from doing crimes.” As we can understand, the purposes of the punishment are the reward and the intimidation.

Generally speaking, the punishment represents a juridical consequence of a crime committed with guilt (Крылова Н. Е., Серебренникова А. В. Уголовное право зарубежных стран. – Москва: Зерцало, 1998, с. 150).

In conclusion, we have to state that the essence and nature of the punishment, bringing into light its purposes in most of the states, represents a study object of the penal and juridical doctrine. Rarely does the penal legislation establish the definition and the purposes of the punishment, as in most of the cases these are either mentioned vaguely, or, in general, there are no references about them.

Nevertheless, it is a general known truth that, for the accomplishment of the purposes of the punishment, the penalty system is to be alleged, brought under normative regulations in most of the cases.

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