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Research Review

LEGAL TECHNIQUE, CRITERIA AND METHODS OF THE BULGARIAN LEGISLATOR WHEN FORMULATING SANCTIONS IN THE CRIMINAL CODE

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This article is aimed at studying the problems of criminal law-making when determining sanctions in the Criminal Code of the Republic of Bulgaria. The theoretical basis of these problems includes legal aspects on the following issues: a) functional connection between the disposition and sanctions in the structure of the criminal law provision; b) legal technique, criteria and methods of the Bulgarian legislator when formulating sanctions in the Criminal Code; c) need to modernize the foundations of the criminal law in connection with the determination of sanctions of legal provisions.

Key words: *problems, criminal law-making, criminal law provision, sanction, crime, formulation, criteria, compliance*

Introduction

The task of the modern criminal law is to achieve greater certainty and clarity between the disposition and the sanction of legal provisions. This means that the Bulgarian legislator in the process of law-making shall express the provisions in the Special Part of the Criminal Code in the way that ensures the maximum degree of logical connection and *conditionality between the content of the disposition and the content of the sanction.*

Discussion

1. Functional connection between the disposition and the sanction

The implementation of this task can be achieved only when the signs of a criminal act are precisely specified in the disposition – so that they correspond to the punishment specified in the sanction of the legal provisions. For this reason, if the disposition is fixed in a generalized manner and covers a wide range of socially dangerous acts according to its structure, then the punishment provided for in the sanction shall be defined in a broader sense. The generalized formulation of one element and the specific definition of another in the structure of a legal provision leads to complications in determining their content.

Achieving the maximum compliance of the disposition with the sanction is especially important, since it will turn a criminal law provision into a certain legal instrument of regulating certain categories of social relationships. With respect to the problem of the relationship between the two parts of a legal provision, it is necessary to emphasize the following: the function of the disposition is to outline the act, which the law defines as a crime, by means of objective and subjective signs; the function of the sanction is to indicate

the type and amount of punishment, that is, to represent an objective legal definition of a crime. The unity and logical conditionality of this functional connection is not interrupted until the legislator, for technical reasons, formulates the legal provision in such a way as to arrange the disposition in one provision, and the sanction in another. Such is, for example, the case with the amended provision of Chapter 253b, Volume 2 of the Criminal Code; there is no clearly enough expressed sanctioning part in its structure, and it is explained that the punishment for this crime is imposed under paragraph 1 of Chapter 253 of the Criminal Code.

It is also important to note that the relationship between the disposition and the sanction is not absolutely defined, but is relative and *mediated by the will of the legislator*. The latter has a certain freedom to assess the need to change the structure and content of the elements of a legal provision, in accordance with the changes in the objective conditions.

The theoretical basis for solving the problem of compliance and relationship between the disposition and the sanction can be the allocation of the theory of criminal law-making as a section of the criminal law system with the corresponding conceptual apparatus. Just as they are guided by the basic principles and provisions in the criminal law, the representatives of the doctrine should develop clear rules that will simplify the task of the legislator to make correct and scientifically sound decisions. The modern criminal law needs to create criteria for both the correct formulation of dispositions and the correct determination of sanctions for individual legal provisions of the Special Section of the Criminal Code.

The concept of the legislator in the process of law-making should be created on the basis of the characteristic essential features of the sanction.

First of all, it must be borne in mind that the sanction is characterized by a negative public assessment that the legislator gives to the committed criminal act and the person who committed it. This assessment condemns the actor as a negative person in the society. The amount and degree of certainty of the punishment, retrospectively, is a consequence of the degree of its public danger and blame. Another feature of the essence of the sanction is that it is a way for the state power to punish the crime committed. The content of the sanction reflects the scale of the powers that the legislator represents in court in order to impose this or that punishment on the person who committed the crime. In this sense, it is necessary to focus on the fact that in case of some absolutely certain sanctions, the scope of the court's powers is less, and the possibility of assessing specific circumstances on its part in individual cases is excluded. This leads to the fact that the role of the court is limited to ascertaining the crime committed, with which the law associates one specific consequence of the sanction.

In case of relatively certain sanctions, the court is given a greater scope of powers to assess and determine a specific amount of the punishment within the framework defined by law, or when choosing from several types of punishment specified in the Criminal Code. It is particularly important to understand that the structure and the content of the sanction represent a reflection of the law's fairness. The punishment fixed in the sanction part of the legal provision must be a fair retribution for the crime committed. And the last but not the least is the fact that, being a specific legal instrument of counteractions to criminal acts, the sanction has a corrective and educational effect.

2. Legal technique of sanction formulation in the Criminal Code

At the regulatory level, the legislator determines the general rules regarding the definition of the punishment for a committed crime in the content of Articles 54–55 of the Criminal Code. However, the principles of legality and individualization do not fully reflect the complexity of the problem with respect to legal technique in the formulation of sanctions. These imperative requirements of the law regulate the actions of the court when determining the punishment. Any material relating to the relationship between crime and punishment should be considered on a legislative basis. Modern criminal policy and criminal law-making require the creation of effective rules for overcoming the mechanical formal approach in determining the punishment in the sanctions part of the legal provision. It is especially important when choosing the type of punishment and determining its size to find the exact measure between individualized certainty and excessive generalization. The legislator will be able to find this exact measure when he gives a correct quantitative assessment of the severity of the criminal act and fixes this severity in the sanction of a specific provision.

The task of establishing the compliance of the crime with the punishment has two main stages. First, it is necessary to select the types of punishments for each category of crimes in the Criminal Code and

only after that specify the amount of these punishments. To achieve full compliance of the crime with the punishment, it is necessary to preliminary measure these categories and assess their value. This means that the severity of the crime, which is contained in the disposition, should be correlated quantitatively with the quantitative severity of the punishment, which is described in the sanction part of the legal provision. In this direction, the compliance coefficient should be found, i.e. it must be established how much punishment corresponds to the unit of the severity of the crime. As a result of the measurement done, a system can be created in which the punishments for certain categories of crimes in the Special Part of the Criminal Code will be ranked in the view of their severity. Such a system would be especially effective if the boundaries (limits) of punishments were fixed in it.

Measuring the specific severity of certain types of punishments for various crimes in practice will make it possible to more accurately determine the upper (maximum) limit of the punishment when being formulated in regard to certain sanctions. Something more will serve as the basis for guidance of the legislator – both when structuring sanctions in the process of criminalizing new criminal acts, and when assessing the sanction consequences already defined in the Criminal Code. Further, this system will affect the degree of certainty of punishments and lead to an improvement in the structure of the relative determination of the sanctions. It is known that today in the current Criminal Code there are some relatively certain sanctions, in which the punishment is determined in such a way that it can be individualized.

Despite the fact that the absolute certainty of a sanction is excluded as a principle of the modern legislative policy, arguments in favour of the need to create this type of sanctions exist and are conditioned by both the emergence and development of new forms of criminal encroachment, and the forms of criminal activity already described in the Criminal Code. Here we are talking about unlawful social violations with a high degree of social threat, such as terrorism (Chapter 253, Volume 1 of the Criminal Code), etc. From the point of view of the criterion of 'degree of punishment's certainty', the sanctions in the structure of criminal law provisions, considering the compositions of these crimes, belong to the category of relatively certain.

In this aspect, it is obligatory for the legislator to change his view and *de lege ferenda* to transform the form of these sanctions into absolutely definite ones. This approach, on the one hand, will exclude the principle of individualization of punishment, but, on the other hand, it will prevent the court from making mistakes when assessing the specific circumstances of crimes with a high degree of danger to society.

3. Concerning the issue of criteria and methods of formulating sanctions

The concept of 'criteria' in this article should not be interpreted in the sense of the classical criteria of the criminal law theory of differentiating the types of sanctions in accordance with the degree of certainty of the punishment provided, but in the sense of the criteria for structuring sanctions in accordance with the severity of punishment. The presence of signs of individual crime components in the current Criminal Code leads to the conclusion that our criminal law prioritizes the objective characteristics of the act, that is, its degree of public danger and moral inadmissibility. The argument in support of this claim is contained in the criminal law itself. According to the order of Chapter 35, vol. 3 of the Criminal Code, the punishment corresponds to the crime. This means that the severity (that is, the type and amount) of punishments provided for by law for various categories of crimes in the Criminal Code system shall be consistent with the severity of the criminal acts themselves. From this it follows that the free will (point of view) of the legislator, whether to establish a less or more severe punishment, depends on the severity of the act.

The severity of the punishment is determined by the degree of public danger of the act. Objective properties that determine the degree of public danger of an act are mainly associated with the objective negative impact that it had or may have on the object of the crime, the type and severity of the criminal result, the method and means of the action, and the danger they created. Therefore, it can be concluded that the specific severity of the crime is the main criterion that is decisive in choosing the most correct punishment. More precisely, the maximum severity of the crime is the basis that shall be considered in the process of law-making when establishing the upper (maximum) limit of the punishment. When the lower (minimum) limit of the punishment is regulated, the legislator can go below the minimum objective severity of the crime in order to enable the court to carry out an individual assessment of the personal qualities of the offender.

It is the personality of the offender that is another criterion that has an important criminal law significance when formulating sanctions. The individual characteristics of a criminal's personality, which characterize

his behaviour, are the basis for differentiating the criminal responsibility for the crimes committed. In this sense, if a certain quality of the person who committed a crime significantly affects the degree of public danger, the legislator emphasizes the importance of this quality in a more easily or more severely punishable composition. A crime cannot be a legal fact on the basis of which a criminal legal relationship arises and, accordingly, a punishment is imposed, if in this case the personality of the criminal is isolated.

The significance of the offender's personality is reflected in the order in Chapter 35, volume 1 of the Criminal Code, according to which the criminal responsibility is individual. For this reason, when formulating sanctions in the process of law-making, it is necessary to combine two main criteria in a dialectical unity – the act and the personality of the offender. The content of the sanction shall be formulated in the way that ensures a balance between these two criteria. This conclusion stems from the fact that the legislator gives a holistic comprehensive assessment of the act and the offender in the sanction of the criminal law provision. Ignoring, underestimating or absolutizing any of these criteria will create difficulties in fair determining of the sanctions.

Considering the technological progress of mankind and the development of computer technology, this legislative concept is likely to undergo certain changes. In the future, the criminal law will have to decide whether the decisive criterion in formulating the structure and content of sanctions will be the personal qualities of the offender or the objective properties of the crime – for example, for commissioning of a crime by the so-called 'artificial intelligence'. From a methodological point of view, the correct consideration and solution of the problem in connection with the definition of sanctions is possible only with the consistent application of the materialist dialectical method. This method requires, when fixing the sanctions consequences in new legal provisions or when making changes in the sanction part of the provisions already established in the Criminal Code, not to approach abstractly, but to bear in mind the inextricable connection of the legal provision with the social relations regulated by this provision.

Conclusion

Considering the present judicial reform, the discussion of the problems of criminal law-making in connection with determination of sanctions in the Criminal Code shall not pursue only scientific-applied purposes, but shall turn into a priority task of the modern criminal policy.

In connection with the study carried out in this article and the arguments presented, we can conclude the following. **Firstly,** the severity of the crime and the search for compliance of the crime and the punishment shall be critical in choosing a proper penalty. **Secondly,** on the basis of the legal technique discussed above, each crime contained in the Special Part of the Criminal Code shall be compared with the degree of its public danger and, in this regard, the fairest punishments shall be offered that will correspond to the purposes of Chapter 36, Volume 1 of the Criminal Code. **Thirdly**, the effectiveness of the proposed legal technique in practice will be expressed in limiting the manifestation of subjectivity on the part of the legislator and minimizing the possibility of excessive increase in the criminal repression or, conversely, underestimation of the repressive elements.

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