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THE NATURE, MEANING AND PURPOSE OF PUNISHMENT AS PHILOSOPHO-LEGAL CATEGORIES

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Abstract.

Objective: the paper focuses on attempts to show, first of all, the potential capacity of the meaning of the “punishment” concept as enshrined by law, by way of construing certain philosophical categories such as nature, meaning, form, purpose and clarifying the functions thereof within the scope of the “punishment” concept definition; to establish characteristic features and peculiarities of punishment which actually pre-determine the substance of such criminal law institution; and, thus, to shed a clearer light onto how and to what extent punishment may influence on the crime rate reduction. **Results:** the existing scientific approaches to definition of nature and meaning of the “punishment” concept have been analysed, and there has been also shown their interrelation with the notions of purpose and function of punishment. There has also been stated that the problem in question is impossible to explore without having construed the philosophical categories of nature, meaning, form, and purpose in attempt to define the notion of punishment. The focus has been placed on the necessity to directly address the philosophical categories in order to understand the nature and meaning of punishment, since any legal phenomenon comprises its own peculiar specific features and can be elucidated only either by means or with the help thereof. **Discussion:** there are reasonable grounds to claim that the nature of punishment is not identical to such notions as “meaning”, “form”, “purpose”, and “function”. It shall be defined largely by the essence of those aims that government attempts to achieve when applying this specific type of social relations regulator. Meaning specifies the nature of punishment. It has been noted that future research prospects on this issue are feasible if the focus is placed on elaboration of contemporary approaches and characteristics of such fundamental categories of legal science as nature, meaning, form, functions, and purpose of punishment.

Keywords: punishment, nature, meaning, purpose, penalty, crime prevention.

Problem statement and topicality. No matter how successfully our society is getting better, all intentions and actions will get delusive unless we stop a rapid growth in all indices of crime. Punishment is given a peculiar role in this regard, as it is the gravest measure among all those pertaining to official enforcement and applied solely for commitment of severe, socially dangerous acts, crimes.

For centuries, such categories as “crime”, “punishment”, and “crime prevention” have been referred to those deemed to have prime importance, to be multifaceted, interrelated and interdependent entities. Meanwhile, the fact that nowadays there is still an ongoing polemic over approaches to defini-

tion of the nature and meaning of punishment, its main functions, and the purpose thereof predetermines the topicality of the issue. In particular, what is a penalty for the crime committed? To what extent of application thereof shall a penalty be deemed adequate to the crime committed? Shall the question of correction of convicted persons be included into the purpose of punishment? These and other questions, as it appears herefrom, are impossible to solve without the knowledge of philosopho-legal categories. At the same time, it should be noted that punishment has always been a necessary and important instrument of public response to the crimes committed and to the persons who have committed them, and is still one of the most wide-

spread forms of exercising criminal responsibility. The factual material accumulated and the results of thorough understanding of the notion require new approaches that would be premised on contemporary scientific achievements in the field of criminal and penal law. Moreover, from this moment on, irrespective of scientific legacy, peculiarities of sociopolitical form of government, system and principles of functioning of criminal justice, the attention to and the interest in multiple punishment-related issues will not fade away.

Study results review. As a theoretical background to solve the tasks set herein, there have been analysed the works of the following well-known scientists: Yu. Antonian, M. Bazhanov, L. Bahrii-Shakhmatov, Yu. Baulin, M. Hernet, O. Hertzenson, V. Hryshuk, V. Duiunov, A. Zakaliuk, I. Karpets, O. Kostenko, M. Korzhanskyi, N. Christie, N. Kuznietsova, P. Matyshevskyi, M. Melentiev, P. Mykhailenka, O. Mikhlina, A. Piontkovskyi, S. Poznyshev, H. Radov, V. Stashys, A. Степанюка, Ye. Strieltsov, M. Struchkov, M. Tahantsev, I. Foinytskyi, M. Sharhorodskyi, I. Shmarov, S. Yatsenko and others, who have expressed their seminal viewpoints onto the problem of punishment, its nature, meaning, and purpose. However, notwithstanding a large number of works establishing and solving the punishment issues, the interest in this or that aspect of the nature and meaning of punishment, purpose and functions thereof has not declined. It should be pointed that the objective and tasks of a contemporary research shall be set, with theoretical assumptions on the punishment nature and consequences thereof, laid down in the works of C. Beccaria, J. Bentham, G. Hegel, O. Kistiakivskyi, O. Leist, F. Liszt, Ch. Montesquieu, M. Tahantsev, G. Tarde, L. Feuerbach, Ad. Frank, taken into account.

Objective statement. The article aims at showing, in the first place, the capacity of meaning of the “punishment” notion as enshrined by law, through construing of certain philosophical categories, in particular, nature, meaning, form, purpose and by clarifying their functions; establishing those features and peculiarities of punishment that actually predetermine the essence of this institution of criminal law; and revealing how and to what extent

punishment has its influence in terms of crime rate reduction.

Statement of basic materials. As a historically predetermined enforcement measure applied by a court on behalf of government to a person convicted of an offence capable to bear criminal responsibility under the law, punishment has always meant restriction or deprivation of such person’s certain rights and liberties envisaged by law, excluding the purpose of corporal hurt or violation of human dignity. It emerged as a form of government response to infringement of the rules set thereby as a certain kind of protection of society against crimes, which traditionally performs not only a punitive role but also a psychological and educational impact on a certain convicted person, its environment, certain population groups with unstable or offending behavior. Punishment is also an instrument to manage the process of social re-adaptation to the social life conditions.

The analysis of the problems of the criminal law history of our State, namely, the issues of crime and punishment, have both a theoretical and an important practical value. This is particularly significant, when the question is to define these notions in the light of philosophical and legal understanding. As general scientific concepts, the philosophical categories may be applied in all institutions and branches of legal science, however, the essential nature of application thereof in the conceptual framework of criminal legal science lies in the necessity to specify the marginally abstract meaning of the terms employed in the field of criminal law. It is necessary, therefore, for the purpose of cognition of the nature and meaning of the notion of punishment, to address the philosophical categories because each legal phenomenon, with the features specifically inherent thereto, can be shown with the help thereof only.

A modern dictionary of philosophy defines nature as a set of characteristics and features of an object (phenomenon) which are in constant interrelation. Nature as a dialectic category is a reflection of regularities typical for a phenomenon. Nature is not self-explanatory, and we cannot perceive it directly as a set of properties and characteristics; we can only discover it gradually. If we perceive a phenomenon directly according to its certain features, then

the nature can be understood only due to deep abstractions and generalizations [1, p.193; 2, p. 64; 3, p. 252].

Meaning is a set of all the elements and processes creating an object or a phenomenon and both their internal interaction and interaction with environment, which are predetermined by peculiar character of such object or phenomenon. Within the meaning of legal phenomena their nature continues, manifests, shows itself and becomes more specific [4, c. 631; 5, c. 219]. Form of a phenomenon is a structure, external boundaries of the phenomenon. It is closely connected with meaning and is fully dependent on it [4, p. 779]. In terms of philosopho-legal science, function is an activity (carrying out, exercising) in the framework of certain system to which it pertains [2, p. 190; 6, p. 168, 437].

It follows herefrom that nature and meaning of punishment are always in conjunction with each other. Nature necessarily preconditions the typical features, properties, and meaning in general, whereas functions are conversion of objective possibilities of this or that type of punishment in organization of social relations and connections arising in the process of awarding and enforcement of criminal punishments into a reality.

Criminal punishment will always be both a means of protection of society against criminal infringements and a means of crime prevention. I. Foinytskyi named criminal punishment to be a social self-protection measure [7, p. 67]. This manifests the general nature of punishments and determines their main functions, with the safeguard function being one of them and playing a special role in combatting criminality. Therefore, one of the most presently topical tasks of the criminal legal science is to develop a correct definition to nature of punishment and to formulate the purposes, functions, system of punishment and activity of the punishment enforcement bodies and institutions on the basis thereof.

Contemporary developments of the criminal legal science show significant growth of this branch of legal science, bringing special value for both theoretical and practical types of activity. Nevertheless, it is still necessary to specify and subject to further theoretical elaboration a number of the terms used. In particular, prior to defining the no-

tion of punishment it is essential to establish its main features. Is it possible to admit a penalty as a key and generic term for punishment? What is punishment? Is it enforcement or violence? As it appears herefrom, each definition reveals a specific aspect of punishment and has a right of existence. However, prior to deciding on the nature of criminal punishment, it is necessary to undertake an analysis of respective scientific definition. It is clear that it is impossible to lay down the scientists' opinions within the framework of one article, but some considerations in this respect claim attention in any way.

The majority of scientists of criminal and penal law have emphasized that punishment is a penalty in itself. Thus, for example, in the opinions of M. Biliaiev [8, p. 64], A. Naumov [9, p. 361], S. Poznyshv [10, p. 3-31], punishment shall be a penalty for a crime committed, which must comprise certain restrictions and sufferings. Moreover, punishment shall be a preventive measure that discourages commitment of new crimes [11, p. 6-8].

N. Christie, vice versa, thinks that criminal punishment is excessive because crime is a society's disease that cannot be cured by means of reprisal [12, p. 11]. Along with other researchers, he suggests applying alternative measures to imprisonment as wide as possible [13, p. 22], and, in particular cases, – relying on preventive measures in the family education domain [14, p. 580]. At same time, when it comes to the question of adequacy and purpose of punishment, the option to apply imprisonment shall not be negated either [15].

In the legislative domain, the notion of punishment has also passed through its thorny path of transformations. The operative CC of Ukraine, in Part 1 of Article 50 "Definition and Purpose of Punishment" states: "Punishment is an enforcement measure applied on behalf of government under a sentence of a court to a person found guilty for commitment of a crime, which entails restriction of the rights and liberties of a convicted person as set forth by the law", i.e. a legislator employed the notion of "a penalty" as a purpose of criminal punishment [16]. This viewpoint, in L. Kruhlikov's opinion, is a tribute to past, on the one hand (with regard to "Punishment aims not only at penalizing ..."), and on the other, – it is incorrect because of a

belief that it is impossible to recognize penalty simultaneously both as nature and purpose of a punishment. As the author thinks about, by penalty as the purpose of punishment, the Ukrainian legislators meant restoration of social justice [17, p.70-73]. By the way, although the purpose of restoration of social justice has been enshrined in the criminal codes of Azerbaijan, Georgia, the Republic of Moldova, the Russian Federation and the Republic of Tadjikistan, one cannot fully agree with L. Kruhlikov's considerations. This comes in response to that the notion of justice is a category of a moral and socio-legal nature, which penetrates into all spheres of social relations. It comprises evaluation of these or those phenomena, whether they contain right and wrong, lawfulness and lawlessness. Justice has evaluative nature. It defies understanding and finding means for achievement thereof, and establishing the indices of efficiency thereof. That is why it appears perfectly true that national legislators and scientists have left the purpose of "restoration of social justice" external to the law and declared it only as a principle. In this respect, it would be viable to uphold the view of an outstanding scientist M. Bazhanov, who defined punishment as: "... this is a peculiar enforcement measure applicable pursuant to criminal law for commitment of a crime" [18, p. 315]. This thesis has been supported by other scientists as well, namely by V. Borysov, N. Hutorova, M. Panov, V. Tiutiuhin, Ye. Streltsov, etc.

V. Hruschuk, by commenting the provision of Article 50 of CC of Ukraine refers "penalty" to the meaning of punishment: "The meaning of punishment is a penalty which lies in deprivation or restriction of rights and liberties of a person convicted for commitment of a crime" [19, p. 129].

V. Lomako carried out a sufficiently complete criminal and legal analysis of the provision of Article 50 of CC of Ukraine. He emphasized correctly that punishment will attain aims only due to its inevitability, and, along with other scientists, he analysed the features of criminal punishment. Getting closer to the restriction of rights and liberties of a convicted person set out in the law, viewed as a punishment feature, V. Lomako insists on penalty to be a property of any criminal punishment. At the same time, what a legislator deems to be a purpose

of punishment, penalty, he explains in the following way: "Admitting penalty as a purpose of punishment does not reduce penalty as an essential property (feature) of any punishment. Penalty manifests in two capacities which are being in dialectical unity..." [20, p. 189-190; 21, p. 356-367].

In order to get a more comprehensive understanding of existing approaches to definition of punishment, its essence, meaning, and purpose, there have been analysed the norms on this question which a number of criminal codes of the ex-USSR countries and Baltic states contain. It develops that until now the legislators of different countries have ambiguously solved the question of nature, meaning, and purpose of punishment, and these issues are rather polemical.

As appears, the definitions of "punishment and "penalty" are very close in its meaning but not identical ones. As it has been stated earlier, nature represents typical features, properties of a phenomenon, whereas it is within the scope of meaning where their nature continues, manifests, and specifies, exactly in the way as if "punitiveness" was always a nature, an internal essence of a penalty. This is so because due to it a convicted person is deprived of certain advantages, suffers certain restriction of his or her rights and liberties, and what is more – government enforces him or her to fulfil certain obligations. This was emphasized by M. Bazhanov, M. Korzhanskyi, P. Matyshevskyi, P. Mykhailenko Y. Noi, M. Struchkov, etc.

Another problem refers to the meaning of punishment. In their attempt to reveal the meaning of the main features of punishment, the scientists have not been specific about their number. Thus, for instance, M. Bazhanov has singled out six punishment features, among which punishment is "a special measure of state enforcement", whereas M. Sharhorodskyi suggests seven features alike. Notwithstanding discrepancies within the approaches to define essential punishment features, the general principle of a punitive activity remains constant – to make the persons guilty in commitment of a crime behave in a law-abiding manner. Punishment, in its nature, may objectively inflict corporal or moral hurt to a convicted person; however, such violence shall be deemed lawful. It may not be combined with harassment, physical mis-

treatment, abasement of human dignity, etc. This is because otherwise the punishment would become an act of cruelty and evil intent as if it existed ipso facto, as something which was groundless, baseless, and unlawful being directed against social morality. Government, vice versa, addresses an offender, to his or her personality, with demands: to change, by effort of will, his or her behaviour to the law-abiding one. Punishment does not negate positive qualities of a person who has committed an offence but only attempts to make him or her act positively in future and not violate the law. Enforcement may be both physical and mental and shall be exercised under conditions of serving punishment. It is in the regime, as essence of a penalty, the relevant set of rules containing restrictions and deprivations applied to a convicted person (physical isolation from the society; physical, moral, property restrictions, procedure and conditions of punishment, etc.) shall be imposed.

It should be emphasized that by virtue of the nature and meaning of punishment only we can establish its ultimate purposes, which government tends to achieve so much when it imposes criminal responsibility, convicts a guilty one to this or that penal measure and to exercising thereof.

As far as the purpose of punishment is concerned, V. Hryshuk has aptly noted that it “manifests” in four domains: 1) penalising of a convicted person – imprisonment or restriction of his or her rights and liberties; 2) correction of a convicted person; 3) preventing a convicted person from committing of a new offence; 4) preventing other persons from committing crimes. The statement that penalty is always exercised when punishment applies is quite essential. It is important it should comply with the principle of justice [19, p. 129].

When analysing the nature and meaning of punishment, touching upon the problem of defining its purpose, it should be noted that correction of a convicted person as well as general and special prevention have been subsumed under the purposes of punishment with a penalty inclusively. All the purposes of punishment, despite their relative autonomy, are closely interconnected. Nevertheless, this dialectical unity does not exclude changes in this or that period and a priority of one purpose over another. These changes may be conditioned by the

state of criminality, trends in criminal policy and legislation, and by the changes in social and economic life of society. In the field of criminal and penal law, the purposes coincide at large and closely intertwine. However, the ultimate result in criminal and executive legislation presupposes not only a corrected person but also his or her social rehabilitation. This may be traced because the majority of the norms of CEC of Ukraine are directed particularly to achievement of purpose of resocialization and adaptation of an ex-offender to normal conditions of the life in society. Unfortunately, not always can this purpose be achieved. Although punishment performs its positive role in crime prevention, it should be applied very carefully. This is because punishment as a public enforcement measure has its own functions. It is, primarily, the punitive function, that entails certain sufferings, restrictions, and other features of personal and property nature. The guarding function means the type of punishment, location for execution thereof, and security restrictions. The educational function is connected, mainly, with social neglect of a person who is a subject of educational influence. The social role of the guarding function of punishment manifests in that it is an important element of the overall system of social crime prevention, in general, and recidivism prevention, in particular. It should be noted that accentuation on the stated functions of punishment becomes possible only due to establishment of the nature and meaning of criminal punishment.

Conclusions. To sum up it is necessary to point that new conditions of existence of our society do not exclude but require applying philosopho-legal categories when defining and studying certain notions. Punishment shall be one of them. There is satisfactory proof that nature of punishment is not identical to the notions “meaning”, “form”, “purpose”, and “function”. It shall be predetermined largely by the scope of meaning of those purposes that government aims to achieve by applying this specific regulator of social relations, and the meaning specifies the nature of punishment.

Therefore, when commenting on the institution of punishment, it is necessary to use mainly, or even exclusively, the formulas of the annotated norms. Otherwise, there may arise undesirable deviation in construing the legal norms in the process

of application thereof. All the above said also points to an urgent need in further development of such fundamental categories of the legal science as nature, meaning, form, functions, and purpose of punishment.

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СУТНІСТЬ, ЗМІСТ ТА МЕТА ПОКАРАННЯ ЯК ФІЛОСОФСЬКО-ПРАВОВІ КАТЕГОРІЇ

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Мета: за допомогою тлумачення деяких філософських категорій, а саме сутності, змісту, форми, мети та з'ясування їх функцій у визначенні поняття покарання показати, перш за все, можливість, закладені законом у сам зміст поняття «покарання», визначити ознаки, особливості покарання, що фактично визначають сутність цього інституту кримінального права та розкрити, яким чином і в якому обсязі покарання впливає на зменшення рівня злочинності. **Результати:** проаналізовано наукові підходи до визначення сутності та змісту покарання та показано зв'язок цих категорій з поняттями мети та функції покарання. Акцентовано увагу на тому, що для пізнання сутності та змісту поняття покарання у кримінально-правовій площині, необхідно звернення до філософських категорій. **Обговорення:** наголошено, що лише за допомогою філософсько-правових визначень може бути розкрито кожне правове явище, якому притаманні специфічні ознаки.

Ключові слова: покарання, сутність, зміст, мета, кара, запобігання злочинам.

Т. А. Денисова

СУЩНОСТЬ, СОДЕРЖАНИЕ И ЦЕЛЬ НАКАЗАНИЯ КАК ФИЛОСОФСКО-ПРАВОВЫЕ КАТЕГОРИИ

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Цель: с помощью толкования некоторых философских категорий, а именно сущности, содержания, формы, цели и выяснения их функций в определении понятия наказания показать, прежде всего, возможности, заложенные законом в само содержание понятия «наказание», определить признаки, особенности наказания, фактически определяющие сущность этого института уголовного права и раскрыть, каким образом и в каком объеме наказания влияет на уменьшение уровня преступности. **Результаты:** проанализированы научные подходы к определению сущности и содержания наказания и показана связь этих категорий с понятиями цели и функции наказания. Акцентировано внимание на том, что для познания сущности и содержания понятия наказания в уголовно-правовой плоскости, необходимо обращение к философским категориям. **Обсуждение:** отмечено, что только с помощью философско-правовых определений может быть раскрыто каждое правовое явление, которому присущи специфические признаки.

Ключевые слова: наказание, сущность, содержание, цель, наказание, предотвращение преступлений.