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**TÍTULO:** Propiedades del castigo penal.

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**RESUMEN:** El castigo penal incorpora propiedades tales como en la teoría del estado y la ley, entre ellas mencionar el carácter estatal, la certeza formal, la seguridad de la aplicación por parte de la fuerza coercitiva del estado, etc. Además, el castigo penal tiene varias características distintivas, en comparación con otros medios reguladores; por lo tanto, hay ciertos requisitos que deben cumplir el propósito del castigo, así como su naturaleza como privación, restricción. El presente artículo aborda estos aspectos de gran interés.

**PALABRAS CLAVES:** derecho penal, castigo penal, ley.

**TITLE:** Criminal penalty properties.

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**ABSTRACT:** Criminal punishment embodies such properties as in the theory of state and law, among them mention the state character, formal certainty, security of enforcement by the state's coercive force, etc. In addition, criminal punishment has several distinctive features, compared to other regulatory means. Therefore, there are certain requirements that must meet the purpose of the punishment, as well as its nature as deprivation, restriction. This article addresses its attention on these important aspects.

**KEY WORDS:** criminal law, criminal punishment, law.

**INTRODUCTION.**

Punishment, as a measure of state legal influence applied to the person who committed the crime, is one of the main institutions of the criminal law of the Russian Federation and an important category of criminal law science.

Punishment is inextricably linked to crime. This is evidenced by at least such a formal attribute as the mandatory provision of both crimes and punishments by criminal law. Outside the scope of the criminal law, there is no crime or punishment.

The essence of criminal punishment is the reaction of the state to the crime committed. For a person who has committed a crime, punishment is a negative criminal legal consequence of his act. On the one hand, it does not depend on the will of the punished and is dictated by the objective needs of

society. On the other hand, it should be presented in the eyes of society as a fair and necessary reaction to a committed socially dangerous act.

In addition, it should be noted that punishment is not just a negative sanction of a criminal law norm, but the most important legal institution of a complex (intersectoral) nature. The institution of punishment is related to criminal, criminal procedure and penal law. The functions of punishment are very diverse, and therefore in the Russian doctrine criminal punishment is considered in various aspects - as a legal institution, as a form of realization of criminal responsibility, as a factor in preventing crimes, etc.

The current Criminal Code of the Russian Federation of 1996 also went along the path of legislative definition of the concept of punishment. Since the definition reflects the properties of the phenomenon being determined; then, as already noted, the main signs of criminal punishment can be understood from it.

**Punishment is a measure of coercion.**

The coercive nature of the punishment means that it is appointed and executed against the will of the convicted person, and besides, it is additionally associated with the application of specific measures of influence on the convicted person.

The coercive property of punishment is also indicated by the fact that in the event of evasion of punishment, a person may be subjected to more stringent measures of criminal law. Coercion is a means of enforcing criminal law by state power.

The concept of punishment as a measure means that each type of punishment has quantitative boundaries and a certain content, is a potentially feasible way of influencing a criminal regulated by criminal law.

As a general rule, the court does not have the right to go beyond the quantitative and qualitative characteristics of the punishment established by law. Only within the framework of punishment as a measure, the court, determining the term and regime of punishment, determines in what quantitative and qualitative limits the punishment is applied to a specific person.

**Punishment as a measure of coercion is exclusively state in nature.**

The state nature of the punishment means that no other bodies, except state bodies represented by court bodies, can impose a sentence. The state has an exclusive monopoly on sentencing. Only it determines the powers in the field of the appointment and execution of punishment, establishes the grounds for application, types and content of punishments.

Acting on behalf of the state, the judicial authorities are responsible for the compliance of the practice of sentencing and execution of punishment with the requirements of the Constitution of the Russian Federation. In accordance with Art. 49 of the Constitution of the Russian Federation, everyone accused of committing a crime is presumed innocent until proved guilty in the manner prescribed by federal law and established by a court verdict that has entered into legal force. Only the conviction imposed on behalf of the state determines the punishment of the person guilty of the crime.

Such a guilty verdict expresses a state, official assessment of a socially dangerous act as criminal, and the person who committed it as a criminal obliged to undergo punishment.

**Punishment for a convicted person is imposed in a special judicial act - a guilty verdict decided by the name of the Russian Federation.**

This punishment differs from other measures of state coercion.

The verdict passed by the court is binding on both citizens and other government bodies. In this case, the court, deciding the conviction of a specific person with the appointment of punishment, must

accurately determine the type of punishment, its size and the beginning of the calculation of the term of serving the sentence.

Administrative penalties are imposed for administrative offenses on behalf of a particular state body or official. Disciplinary measures are appointed in the order of official subordination for violations of the service, decisions on civil cases are also issued in the name of the Russian Federation, they do not entail such a specific consequence as a criminal record.

**The hallmark of punishment is the basis of his appointment.**

Such can only be the commission of a crime, the signs of which are determined in Art. 14 of the Criminal Code. In the event that a person committed an act in which at least one of them is absent, then the punishment cannot be imposed under any circumstances.

In addition, punishment can only be imposed on a person convicted of a crime by a court. Therefore, before imposing a certain measure of punishment on a person, the court must establish and prove the person's guilt of the crime (Articles 24–28 of the Criminal Code of the Russian Federation). The Code of Criminal Procedure of the Russian Federation governs in detail the procedure for establishing and securing the guilt of a person in the relevant procedural documents.

**The punishment has a strictly personal (individual) character.**

It applies only to the person who committed the crime. No other person can be punished for a crime committed by another person; so, in particular, the court cannot determine the punishment of the parents of a minor who is guilty of an offense if they are not directly related to this offense; for example, they do not act as mediocre causers of harm or are not their accomplices. They may be penalized for inappropriate education, but these measures are not criminal penalties. Criminal punishment cannot be imposed on any collective or legal entity.

Unfortunately, it should be recognized that the current Criminal Code of the Russian Federation contains rules that allow the execution of sentences by other persons, and not by persons who have committed a crime. According to Part 2 of Art. 88 of the Criminal Code of the Russian Federation, which lists the types of punishments imposed by a minor, the fine imposed on a minor convict, by a court decision, may be exacted from his parents or other legal representatives with their consent. We believe that this is an unsuccessful legislative decision that contradicts the basic principles of criminal law, and above all the principle of personal responsibility.

**Punishment always consists in depriving or restricting certain rights and freedoms of the convicted person.**

The content of the punishment is expressed in the deprivations or restrictions of the rights and freedoms of the convicted person provided for by the Criminal Code of the Russian Federation, since it is impossible to otherwise exert a coercive effect on this person.

A convicted person may be limited in freedom, labor rights, spiritual and material benefits, including wages received. For serious crimes, the convicted person may be deprived of liberty for a long term, and for some particularly serious crimes against the person, he may be sentenced to life imprisonment.

In different types of punishment their repressive potential is different, which directly depends on the nature of those rights and freedoms that the convicted person can be deprived of.

In its content, punishment is always punishment for a crime committed, atonement for harm caused to society. Its application involves causing the criminal both moral suffering and infringement of part of his rights and interests. At the same time, punishment does not have the goal of inflicting physical suffering on the convict or humiliating human dignity.

The extent and nature of the relevant restriction or deprivation ultimately depends on the gravity of the crime committed, the personality traits of the perpetrator and other circumstances of the case.

It should be noted that as a result of conviction, the offender may lose many other benefits (family, respect of others, etc.), but they are not included in the content of the punishment, since the need for their deprivation is not specified in the law.

The punishment is the public legal negative assessment of the offender and his actions by the state, which is expressed in the statement in the court verdict of a person committing a specific crime.

The state determines in Part 1 of Art. 2 of the Criminal Code of the Russian Federation, the range of values that are subject to protection by criminal law. It also in the Criminal Code of the Russian Federation describes socially dangerous forms of human behavior, highlighting them from possible forms of human behavior. Thus, by imposing a punishment on a specific person for criminal behavior, the state officially informs both the guilty and other persons that they negatively assess the behavior of the person who encroached on protected values.

Sometimes criminal records include signs of punishment. A criminal record is certain legal restrictions of a criminal law and general nature that are imposed on a person serving a sentence or serving a sentence, as well as a suspended sentence (Article 86 of the Criminal Code of the Russian Federation).

According to some modern forensic experts, a criminal record is both a sign and a legal consequence of punishment.

Arguing sequentially, we get that if a criminal record is a sign of punishment, then in the case when the real punishment is not applied to the defendant, there should not be a criminal record. But convicted are both persons to whom the punishment was not applied (conditionally sentenced during the probationary period), and persons who are released from serving the sentence (ahead of schedule or after serving the sentence). In addition, a criminal record does not characterize the punishment as

such, but the person to whom it is assigned. Therefore, a criminal record would be more correct to recognize not as a sign of punishment, but as the legal consequence of his appointment, expressed in the special legal state of the person.

Since criminal punishment means a specific way of legal regulation of social relations, it should have the general properties of regulatory means.

In the literature, the “properties” of criminal punishment were called differently. A.F. Kistyakovsky - about the “desirable properties of punishment” (Kistyakovsky, 1912), A.I. Rarog - about "the conditions that punishment must meet" (Rarog, 2015), D. Dril - about the "necessary properties of lawful punishment"(Dril, 1909), etc. It is about those properties that criminal punishment must meet. All the properties of punishment can be divided into two groups according to the criterion of the obligatory implementation of them in it. Therefore, in this paper we consider the essential properties (qualities) and external properties of criminal punishment. Under the essential properties of criminal punishment are understood those properties that are inherent to him as the spokesman of the method of criminal law - punishment and the threat of its use. In their absence, one measure or another will not be considered a criminal punishment, even if it is so called in the law.

According to Article 43 of the Criminal Code of the Russian Federation, criminal punishment is a measure of state coercion, appointed by a court verdict. Contrary to the fact that when defining a concept, the legislator should apply its essential features, not all should be regarded as such. Firstly, it affects such a sign of punishment as the appointment of a court verdict. This sign is not a sign of the punishment itself, but the order of its appointment. It should also be noted that not only the court has the right to impose criminal punishment. If the punishment is not amenable to calculus in one or another of its constituent units, and is not a measure in terms of quantitative and qualitative measurement, then it does not cease to be a punishment for a crime. In this case, a criminal punishment that does not have a real embodiment, does not objectify itself outside does not exist in



reality. Based on this, such a quality of punishment, objectification of it outside (expression in the event) is essential.

It should be emphasized that criminal punishment is one of the forms of expression of state coercion. According to the words of V. A. Nikonov, “the indicated feature acts as a generic one and can be considered as a concept, moreover, denoted by a phrase, each term of which also has its own concept” (Nikonov, 2000). Coercion is peculiar not only to punishment, but also to the whole criminal law mechanism as a whole.

## **DEVELOPMENT.**

### **Methodology.**

The methodological basis of the research consists of general scientific, private scientific and special methods of cognition.

The analysis method was used in the interpretation of regulatory legal acts, the study of special legal literature and the study of materials of judicial practice.

### **Discussion and results.**

According to the statement of A.L. Remenson, punishment is a compulsion by virtue of its objective qualities of "external violence"(Remenson, 2003; Remenson, 1990). Based on this, we can say that coercion with respect to criminal punishment acts as a method of its implementation, but not as an immanent property.

Other signs specified in Art. 43 of the Criminal Code of the Russian Federation can be regarded as significant. In Art. 43 of the Criminal Code of the Russian Federation indicates the applicability of criminal punishment only to persons guilty of an offense. This property of criminal punishment shows the connection of punishment with a crime; it distinguishes the application of punishment for a crime.

The Criminal Code of the Russian Federation also speaks about the property of punishment being deprivation, restriction. This property must be considered among the most important and inalienable. Deprivation of wealth, legal restrictions of specific opportunities constitute the essence of punishment. Deprivations and restrictions constituting the content of criminal punishment possess certain features that distinguish them from other non-punitive deprivations and restrictions. These restrictions and deprivations should be the “material carriers” of the negative moral and political assessment of the convict and his actions by the state (Kovalenko et al., 2019). Also, the restrictions and deprivations contained in the punishment should cause the convict suffering, by creating conditions for the convict different from a free society.

It is worth noting that the essence of punishment cannot exist outside, and regardless of the nature and amount of strictly specific punitive restrictions, outside its specific measure. O.N. Struchkov suggested that the difference between punishment and other legal sanctions should consist of punishment, in that the punishment should not be liberal, but a harsh measure that would bring the convicted person burdens and suffering (Struchkov, 1967).

Another main property of criminal punishment is the ability to cause suffering and focus on it. Based on the statements of L.E. Vladimirov, it follows that the punishment must represent a school of suffering (Vladimirov, 1909). Also A.F. Kistyakovsky explained: “Punishment must be cleansed of the physical torment of the body and limited as much as possible to the inevitable constraint and spiritual suffering that are agreed upon by the nature of punishment in general” (Kistyakovsky, 1912). The ability to cause suffering is an essential property of criminal punishment, its basis. Thus, regardless of the type of restrictions and their concentration, the consequence of their imposition should be the suffering of the convicted person.

The next property of criminal punishment is the ability to serve as an expression of conviction, which is inalienable (Kovalenko, 2019). The punishment rests on a negative assessment of the crime, on its conviction, the attitude to this property was not the same and did not gain a clear understanding in the legal literature. The main discussion revolved around the correlation of conviction and punishment, the place and role of conviction in punishment. Researchers such as N.D. Sergievsky, L.S. Belogritys-Kotlyarevsky, D.G. Talberg, S.P. Mokrinsky, A.A. Zhizhilenko, K.F., A.L. Remenson, B.C. Prokhorov, V.D. Filimonov, P.P. Osipov, A.N. Tarbagaev and others expressed their opinion on this matter and attached to the conviction either the importance of the exhaustive essence of punishment, or one of its elements.

As already noted, an essential property of punishment is its direct and deliberate focus on causing specific guilt for the perpetrator of the crime through deprivation, restriction. If you think about it, you can come to the conclusion that any deprivation, restriction can cause feelings of psychological discomfort, humiliation of personal dignity.

Another issue to be addressed is punishment. This issue is debatable. The opinion of forensic scientists about the nature of the punishment and its role diverged. The debate about the relationship between the categories of “punishment” and “punishment”, about the presence or absence of the identity of these concepts is now increasingly resolved in favor of considering them as “phenomena” and “essence”. If you deal with the concept of punishment, it should be noted that the functional load of the concept of “punishment” in punishment consists in indicating its compensatory nature in relation to the crime.

As noted by A.L. Remenson, “the compensatory nature makes it possible to clearly distinguish punishment from a number of educational measures of influence applied to criminals in connection with the commission of a crime (but not for the commission of a crime) and which are not punishable (Remenson, 1990). Summing up, we can agree with the authors who believe that punishment is a

compulsory compulsion to suffer, as well as with the position that punishment and punishment are similar concepts.

Based on the foregoing, the essential properties of criminal punishment are considered such as objectification in the event, state character, retribution, the ability to cause suffering and focus on it, the expression of conviction, the ability to be deprivation, restriction. The marked properties should be reflected in the determination of punishment, including legislative. At the same time, it is irrational to use the indication of coercion in determining the punishment as a way of using it.

Criminal punishment, being a special means of legal regulation, has a number of properties. They can be divided into two groups according to the criterion of mandatory implementation in it. Based on this, they can be divided into essential properties (qualities) and external properties of criminal punishment. The essential properties of criminal punishment must be considered those that are inherent to him as the spokesman of the method of criminal law - punishment and threats of its use.

### **External properties of criminal punishment.**

External signs of criminal punishment in no way reflect its essential properties, but their presence follows from the principles of criminal law and ensures its effectiveness. These include the personal nature of the punishment. The problem of the circle of “victims” from the application of punishment is associated with the problem of the individualities of deprivations and restrictions suffered as a result of punishment. When the state acts on a person not only as a criminal, restricting him in rights and freedoms, then it acts as a citizen, a member of society. As A.L. Remenson: “depriving a convicted person of those benefits that, in principle, are of value not only for the punished subject, but also the society punishing him, is considered to be a necessary and specific side of punishment (Remenson, 2003).

Pre-revolutionary prisoners were the first to notice that the relatives of the convicted person were indirectly exposed to punishment. As L.E. Vladimirov noted, “Each person is in such a relationship with other people that these others should, to a greater or lesser extent, sympathize with both his sufferings and his joys, therefore, punishment should only affect the interests of the criminal and not affect the interests of people innocent of anything” (Vladimirov, 1909). The impossibility of the absolute realization of this property, but urged the legislator to stick to it when drawing up the punishment. Legal scholars - pointed out the need to create mechanisms that, if possible, would limit the negative impact of criminal punishment on the environment of the convict.

The analysis of the problem of individuality, personification of deprivations and restrictions with the help of criminal punishment implies the construction of a systematic classification of its possible consequences. First of all, the basis for classifying the consequences of punishment can be, the fact that they are provided for in the legislation. The consequences can be divided into legalized and illegal. Legalized consequences include those that are considered a direct consequence of the criminal punishment itself and are taken into account by the criminal and criminal executive, criminal procedure legislation, as well as the prohibitions provided for by a number of other laws. These effects can be classified into direct and indirect. Direct consequences are those that were implied by the legislator when penalizing socially dangerous acts, they constitute the direct content of the punishment.

The illegal consequences include those which the legislator is not able to foresee due to a number of different circumstances (Emami et al., 2019). The legislator refers to these consequences either indifferently or negatively. We can say that the spectrum of possible manifestations is wide, since there is no regularity and algorithm for their appearance.

The punishment should be distinguished by equality for all persons, that is, its size should depend solely on the properties of the criminal act itself, and not on the personal, class position of the offender. As Rarog, A.I. “The punishment should, as far as possible, be uniform for the most diverse personalities in terms of position and degree of perception. Justice will become positively unattainable if the same punishment is less or not sensitive for one, and hard for the other”. (Rarog, 2015). When penalizing crimes, the legislator should create the same conditions for the purpose of punishment precisely as an act of repression, substantial deprivation, while focusing on certain features of the personality of the criminal.

The deprivation of the right to occupy certain positions or engage in certain activities is not a discrepancy between the characteristics of equality and the existence of such punishment. Realizing this, the legislator is repelled by the varying degrees of social danger of the subjects of crime.

Another illustration of the neglect of the property of equality before punishment during penalization is provided by Article 50 of the Criminal Code of the Russian Federation, which implies correctional labor. Based on this article, correctional labor can be applied only to convicts who do not have a primary place of work, therefore this punishment does not apply to persons who have a place of work at the time of conviction.

Another property is the certainty of punishment, it follows from the instructions in Art. 43 of the Criminal Code to his measure. In this situation, the measure acts as a quantitative filling of a specific property, as a certainty of punishment, and also as a means of implementing the content, an event. As A. Sakaev wrote, “by the certainty of punishment it is necessary to understand the precise establishment in the criminal law of the exact sizes and terms, as well as the amount of deprivation and restriction of the rights and freedoms of the convicted person” (Sakaev, 2011).

It is worth noting that the certainty of criminal punishment in the Criminal Code is expressed in a clear definition of the amount of deprivation and legal restrictions, in the exact establishment of the amount of deprivation and legal restrictions, which is achieved by strengthening certain qualitative and quantitative characteristics of the punishment (Lyubavsky, 2018). This wording of the sentence of deprivation of liberty, defining it through isolation of the convicted person, reveals the actual, rather than the legal content of deprivation of liberty.

The deprivation of the right to occupy certain positions or engage in certain activities is another case of a lack of certainty of punishment. How does E.S. Litvina: “The criminal legal content of the punishment in the form of deprivation of the right to occupy certain positions or engage in certain activities is normatively defined, the law is quite broad and ambiguous. It includes a ban on holding certain positions in the public service and in local authorities, as well as engaging in professional and other activities” (Litvina, 2002).

Such a property of criminal punishment as the separability of punishment, finds the same justification. Many authors considered this necessary. And I. Foynitsky wrote that “this would make it possible to adapt the punishment to various degrees and shades of guilt”, one cannot disagree with his opinion (Foynitsky, 1916).

The divisibility property is necessary for individualization purposes, but already at the execution stage, since divisibility in this situation implies a change in the amount of punishment depending on the behavior of the convicted person, as well as the possibility of a positive solution to the issues of installment plans, the imposition of a punishment “below the lower limit provided for in the sanction” (Foynitsky, 1916), for unfinished crime committed in complicity, the use of amnesty, pardon, etc. It can also be said that divisible punishment provides the very possibility of constructing relatively specific sanctions. Any punishment, if divisible, can be broken down by the quantity expressed either in duration (term), or in some kind of natural units (amount). In years, months, days, hours - in time

indicators, duration is expressed. And in money, or objects - during confiscation, a natural unit is calculated. It should be noted that in order to promote the law-abiding behavior of the convict, the divisibility of punishment makes it possible to replace the unserved part of the punishment with the mildest type of punishment. Conversely, the impossibility of dividing the punishment into parts gives rise to the impossibility of insufficiently serving the sentence.

One more property of criminal punishment can be distinguished - this is the possibility of stopping (interrupting) it. Legal scholars wrote that punishment should be repayable and abolishable. This property was associated with a miscarriage of justice. As reasoned V.V. Yesipov: “the punishments must be such that their course can be stopped at any given moment. The possibility of repayment is one of the basic requirements of a rational punitive system” (Yesipov, 1910).

We suggest that this property should be considered in the context of the possibility of suspension or termination of criminal punishment in connection with the “premature” achievement of the goal of correction, the illness of the convicted person, i.e. without the need to restore public relations affected by criminal repression.

The property of stopping (interruption) is associated with such a property of punishment as: restorative relations, which were the object of punishment, i.e. who were really influenced by criminal repression through their deprivation or derogation. Upon termination of criminal punishment in connection with the erroneous criminal prosecution of a person, it leads to the need to eliminate or minimize the consequences in the form of impaired personal social relations that were caused. In the case when the consequences of punishments capable of stopping are subject to resumption after the stopping, termination of their action.



## CONCLUSIONS.

### **To summarize the interim results.**

It is necessary to touch upon one important point when discussing the recoverability of the consequences of punishments. It lies in the fact that the probability of restoration of the complex of legal relations in the form that it was before the impact of punishment is not absolute. This topic was touched upon by I.Ya. Foynitsky, saying that: "there are no punishments that can be fully restored, except for property"(Foynitsky, 1916). We agree with his opinion, it is impossible to bring to a complete initial position those social relations that have suffered deprivation or restriction.

It can be concluded that the endowment of criminal punishment with all the above properties is its idealization. The possession of such external properties as: personal character, equality before punishment, certainty, divisibility, the possibility of stopping it, the restoration of relations that were the object, contributes to the implementation of the principles of criminal law in punishment, as well as its effectiveness.

So, based on the foregoing, we assume that:

- ✚ Firstly, the essence of criminal punishment should be understood as the punitive reaction of the state (repression), entailing a change in the legal status of the alleged individual who has reached the minimum age of criminal responsibility for the crime and found guilty of an offense;
- ✚ Secondly, criminal punishment is a set of interrelated and interacting signs or elements established by law;
- ✚ Thirdly, criminal punishment is a legal consequence of a crime, characterized by its own content, form, order and conditions of application (appointment and execution) and pursuing certain socially useful goals.

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