HUMANIZATION OF PUNISHMENT. EVOLUTION OF THE CONCEPT IN DRAFTS OF NORMATIVE LEGAL DOCUMENTS OF THE XVIIIth AND EARLY XIXth CENTURIES IN RUSSIA

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Maksim Smoljarov, candidate for a master’s degree at the Civil Law and Litigation Chair at the Academy of Federal Penitentiary Service (the Russian abbreviation FSIN) of Russia, e-mail: msmolyarov@yandex.ru.

Abstract. The article analyses how ideas concerning punishment fulfillment were developing in legislative proposals of normative legal documents of the XVIIIth and early XIXth centuries. The author emphasises the fact that despite the declared humanism, all legislative proposals under examination still considered death penalty as the principal punishment. Nevertheless some modification of the capital punishment did take place: whereas early in the XVIIIth century there were specified two formats of death penalty (ordinary and qualified), the Draft of the Criminal Code of 1813 lists only an ordinary death penalty. Analysis of historic processes and punishment conceptions that are set forth in legislative proposals of the XVIIIth and early XIXth centuries allowed the author to predict further development of domestic legislation in the field of penal sanctions.

Keywords: punishment, death penalty, legislation, reforms of the XVIIIth and early XIXth centuries.

On October 14, 2010 the government of the Russian Federation adopted the Development Concept for the penitentiary system in the Russian Federation, which is to cover the period till 2020. According to its authors, this Concept is to serve as the foundation, the basis that will facilitate effecting further reforms of the penitentiary system of Russia for the years ahead. General direction of penitentiary system reforms complies with the objectives that are specified in the document itself, namely: enhancing efficiency of penitentiary institutions and agencies; making conditions for convicts more humane, strengthening interaction between the state and the society in matters concerning reforms of the penitentiary system, etc. The presented humanistic ideas root in the past. Historic sources of the Concept can be traced back to the Draft Regulations of the State of Russia of 1723–1726, Draft of the Criminal Code of 1754–1766, legislative proposals of Catherine II known as Catherine the Great (Draft of the Criminal Code of the second half of the 1770's and the1780's, Draft Code of Regulations about Prisons of 1787, etc.), and also to the
Draft of the Criminal Code of 1813.

Volume 3 of the Draft Regulations of the State of Russia of 1723–1726, devoted to issues that concern crime and punishment contained the following provisions: first, gravity of punishment depends upon a form of guilt, type of crime and other factors; second, criminal cases shall take into account mental capacity and age of the criminal; third, in what regards punishment, men and women, children and parents are equal before the law. At the same time there was introduced a new execution in the system of punishment, namely quartering after breaking on the wheel, which was to be fulfilled to preclude a premeditated malice aimed at the sovereign. Purposes of punishment according to the document were as follows: intimidation of apt criminals, vindictive punishment, use of convicts’ labour for state needs. Draft Regulations of the State of Russia of 1723–1726 was not adopted. Developing the Regulations in the Committees proceeded with varying success.

The next serious effort to modernize legislation was made in 1754–1766. In that period in the course of the Committee work there was produced a full-fledged draft of Criminal Code. The document contained considerations on several main issues: how to make criminal investigations (i.e., procedural matters) and how to proportion the penalty to the nature of the crime. As regards punishments, according to drafts the system of penalties was expanded: now the list of death penalty types included execution by means of decapitation and hanging, burning and breaking on the wheel. Besides, the draft also included “an absolutely unheard-of for Russia form of the capital punishment – laceration asunder by five horses”. The purpose of the punishment is again to intimidate people. Thus, one can hardly trace any humanity in punishments specified in Drafts of the Criminal Code. However, elaborating general theoretic thesis (for example, confinement conditions, investigation procedures) per se significantly contributed to evolution of domestic political and legal thought. These drafts of the Criminal Code were not adopted, though.

Another effort to modernize legislation was made during the reign of Catherine II. Specially for the Code Committee of 1767 the Empress wrote the Legatum, which consolidated fundamental views of the Head of State on questions, connected with development of the state and its penitentiary system. Catherine specified a range of punishments to be applied to the criminal. The list contained death penalty (Chapter X Article 210), confinement, corporal punishments, fines, and other types of punishments. Catherine emphasized that the punishment must depend on a social danger of the deed (Chapter VIII, Article 94 of Legatum).

Later the Empress expressed similar penitentiary ideas in her Draft of the Criminal Code of the second half of the 1770’s and the 1780’s and in the Draft Code of Regulations about Prisons of 1787. In the Draft of the Criminal Code Catherine the Great did not just present her elaborated view on types of punishments; she also engaged herself in academic research (for example, Chapter XI gives the first fullest definition of «corruption crimes»).

The Draft Code of Regulations about Prisons of 1787 consolidated the notions concerning confinement conditions for convicts committed to prisons of the Russian Empire. In fact, this document, containing one hundred articles, outlined fundamental
principles of penitentiary policy of the Russian state for subsequent years. Basic ideas of the document were as follows: improving the prison system, determining the legal status of administrative authorities, and making conditions for convicts more humane. These drafts were never implemented in practice, though. It could happen due to problems both in domestic and in foreign policy of the Russian state.

After Catherine it was Emperor Alexander I who in early XIX century made certain efforts to reform the state legislation and penitentiary system. Specially for this purpose there was set up the Committee on drafting laws. The Committee worked by fits and starts. In 1813 it presented another Draft of the Criminal Code.

The Draft considered issues of crimes and punishing criminals, relief from criminal responsibility. Articles 22–23 provided for the following system of penalties: 1) ordinary death penalty; 2) political death; 3) deprivation of freedom and honour; 4) ignominious punishments; 5) a) imprisonment without ignominy and b) corporal punishments; 6) pecuniary fines; 7) discipline church. However, that document was never adopted, either.

So we can conclude that over the period from the XVIIIth to the beginning of the XIXth centuries death penalty remained one of the most commonly applied types of punishments both in theory and in practice. However, creating drafts of the abovementioned regulatory legal acts by itself demonstrated an inclination of the state authorities to reduce number of executions, make punishments more humane, improve conditions for convicts (e.g., in the Draft Code of Regulations about Prisons of 1787). Thus, the legislative proposals under examination were a serious step forward in developing political and legal thought in Russia.

We cannot possibly consider using in full political and legal ideas of the past presented by drafts of regulatory legal acts of the period covering the XVIIIth and early XIXth centuries in modern times, but all common-sense proposals that the discussed documents present, as well as attempts to implement them in practice, should be included into the “gold reserve” of experience in regard of developing the modern state in general and its penitentiary system in particular. Unfortunately, experience of negative reforming the state structure in the XVIIIth century is not investigated fully by modern scholars, which affects essentially the process of implementing reforms at the present time.

References
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